

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
MISSOURI

State OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General,)

Plaintiff,)

v.)

Case No. 972-1465

AMERICAN TOBACCO COMPANY, INC.;)
AMERICAN BRANDS, INC; BROWN AND)
WILLIAMSON TOBACCO CORP; B.A.T)
INDUSTRIES, PLC; BATUS HOLDINGS)
INC; BRITISH AMERICAN TOBACCO)
HOLDINGS LTD; BRITISH AMERICAN)
TOBACCO COMPANY, LTD; LIGGETT &)
MYERS, INC; LIGGETT GROUP, INC;)
THE BROOKE GROUP, LTD; LORILLARD)
TOBACCO COMPANY, INC; LORILLARD)
CORPORATION; LOEWS CORPORATION;)
PHILIP MORRIS, INC; PHILIP)
MORRIS COMPANIES, INC; RJ)
REYNOLDS TOBACCO COMPANY; RJR)
NABISCO, INC; UNITED STATES)
TOBACCO COMPANY; THE COUNCIL FOR)
TOBACCO RESEARCH USA, INC; THE)
TOBACCO INSTITUTE, INC; SMOKELESS)
TOBACCO COUNCIL, INC; and HILL)
AND KNOWLTON, INC,)

Defendants.)

DEPOSITION OF PETER CLARKE

On Wednesday 26 August 1998

Held at the offices of Lovell White Durrant
65 High Holborn
London England

A P P E A R A N C E S

For the Plaintiff:

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By: KENNETH B. MCCLAIN

For the Defendants:

Simpson Thacher & Bartlett
425 Lexington Avenue
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By: MARK G. CUNHA

Also Present:

JOHN ROESSER (Simpson Thacher & Bartlett)
GRAHAM LIVINGSTON (Lovell White Durrant)

Ailsa Williams: Court Reporter (Smith Bernal International)

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1 26th August 1998. (9.50 am)

2 Deposition of Peter Clarke.

3 MR CUNHA: Before we swear the witness, I would
4 like to make a statement with respect to privileged
5 documents and trade secret documents if you don't mind.

6 First let me say for the record that Mr Clarke is
7 being produced today in response to both of the deposition
8 notices served by the State of Missouri on B.A.T Industries
9 plc. With respect to privileged documents, as you are
10 aware, in the Court's August 14, 1998 order, the Court laid
11 out a procedure by which the plaintiff can challenge
12 defendant's claims of privilege. Thus in our view it would
13 be improper for the plaintiff to today use any document to
14 which one or more defendants asserts a claim of privilege
15 until the court has adjudicated the issue. To the extent
16 that plaintiff attempts to use privileged documents, we
17 have a standing objection to the use of such documents.

18 Given the number of privileged documents in the
19 case, it is not possible for us or it may not be possible
20 for us to identify during the course of the examination a
21 particular document as to which a defendant has a claim of
22 privilege. To the extent that we are not able to identify
23 such a document and do not object to it at this time, that
24 should not be interpreted as a waiver of our objection. We
25 have a standing objection to the use in this examination of

1 any privileged documents. To the extent that we can
2 identify documents as privileged on the spot we will of
3 course make our objection immediately, but our silence
4 should not be taken as an indication of a waiver of an
5 objection, because it will not be.

6 In addition, on August 20, 1998, the Court
7 entered an agreed interim protective order for B.A.T
8 Industries plc and British-American Tobacco (Holdings)
9 Limited trade secret information. If any documents
10 produced by either of those parties pursuant to the
11 protective order are used during the course of this
12 examination, those documents and any portions of the
13 transcript that relate thereto should remain under seal
14 pursuant to the Court's order.

15 MR MCCLAIN: Well, I need some clarification.
16 In regard to claims of privilege, in regard to documents,
17 are you planning to instruct the witness not to answer any
18 questions about a document that you claim is privileged, or
19 is it simply that you are preserving your objection to the
20 issue.

21 MR CUNHA: I think we ought to take it as it
22 comes. There may be some questions about a privileged
23 document that in and of themselves may not call for
24 privileged information and may well be answerable. To the
25 extent that a question calls for privileged information

1 then we will of course instruct, but I would rather take it
2 item by item.

3 MR MCCLAIN: We will see how we do then. Okay.
4 Go ahead and swear the witness.

5 PETER CLARKE

6 Having been duly sworn

7 Testified as follows:

8 Direct Examination by MR MCCLAIN:

9 MR MCCLAIN: Could you state your full name,
10 please.

11 A. My full name is Peter Lampard Clarke.

12 Q. Mr Clarke, can you provide us with your
13 address, both business and personal?

14 A. My business address is B.A.T Industries plc,
15 Windsor House, 50 Victoria Street, London SW1. My
16 residence is [DELETED]

17 Q. Are you a resident of the UK?

18 A. I am.

19 Q. Do you hold any other citizenships?

20 A. I do not.

21 Q. How long have you been employed within the BAT
22 Group of companies?

23 MR CUNHA: And by "BAT Group" you are referring
24 to B.A.T Industries and all of its subsidiaries.

25 MR MCCLAIN: Are you familiar with the term "BAT

1 Group"?

2 A. BAT Group is a term which is commonly used to
3 describe a number of different companies.

4 Q. Do you use that term?

5 A. Sometimes.

6 Q. Is it commonly used within B.A.T Industries?

7 A. Sometimes.

8 Q. How do you -- then using the definition
9 commonly used within B.A.T Industries, or used sometimes
10 within B.A.T Industries, how long have you been employed
11 within the BAT Group?

12 A. Since 1991.

13 Q. Before that time how were you employed?

14 A. Immediately prior to 1991, I was employed by a
15 company called British Sky Broadcasting Limited.

16 Q. In what capacity?

17 A. Company Secretary.

18 Q. How long were you with British Sky
19 Broadcasting?

20 A. Seven months.

21 Q. Before that time how were you employed?

22 A. I was employed by British Satellite
23 Broadcasting Limited.

24 Q. Was that a related company?

25 A. British Satellite Broadcasting Limited merged

1 with Sky Television in 1990.

2 Q. How long were you with British Satellite
3 Broadcasting Limited?

4 A. I joined British Satellite Broadcasting
5 Limited in 1987.

6 Q. Before that time how were you employed?

7 A. I was employed by a company called BICC plc.

8 Q. What is their business?

9 A. Cable manufacture and contracting.

10 Q. And how long were you with that company?

11 A. I joined that company in 1971.

12 Q. Before that time what were you doing?

13 A. I was assistant solicitor with a firm of
14 solicitors here in London.

15 Q. And how long were you an assistant solicitor?

16 A. Since 1969.

17 Q. Is that when you graduated from university?

18 A. No, I graduated from university in 1966.

19 Q. You see, you try to jump ahead and you never
20 win. Go ahead.

21 A. I graduated in 1966 and then I served articles
22 as a trainee from 1966 to 1969.

23 Q. So 1969 was your first full-time employment as
24 a solicitor?

25 A. That is correct.

1 Q. During any of this time from 1966 through
2 1991, did you have any contact or role with the BAT Group?

3 A. No.

4 Q. How was it in 1991 that you came to be
5 employed by BAT, the BAT Group?

6 MR CUNHA: I object to the form of the
7 question. The witness was never -- there is no such thing
8 as the BAT Group, so he could not have been --

9 MR MCCLAIN: Which company were you employed by
10 in 1991?

11 A. British-American Tobacco Company Limited.

12 Q. And in what capacity?

13 A. Company Secretary.

14 Q. How long were you in that position?

15 A. Until 1997.

16 Q. What position did you obtain in 1997?

17 A. Company Secretary of B.A.T Industries plc.

18 Q. Had B.A.T Industries existed before that time
19 in 1997?

20 A. Yes.

21 Q. When was it created?

22 A. I think it was in 1928 when it was known as
23 Tobacco Trust Securities Limited. It changed its name to
24 B.A.T Industries plc in 1976.

25 Q. How long had British-American Tobacco Company

1 Limited existed before you became secretary in 19 -- or
2 what year did it come into existence as far as you know?

3 A. 1902.

4 Q. As company -- who was the Company Secretary of
5 B.A.T Industries plc before you became Company Secretary in
6 1997?

7 A. Mr David Wilson.

8 Q. Is he currently at B.A.T Industries plc?

9 A. No.

10 Q. Is he currently employed?

11 A. Yes.

12 Q. By whom?

13 A. I believe it is by Debenham Group plc.

14 Q. What is Debenham Group plc's business?

15 A. Retailing.

16 Q. Are they related to or in any way involved
17 with B.A.T Industries or the BAT Group?

18 A. No.

19 Q. Did you seek the position of B.A.T Industries
20 plc's Secretary, or were you asked to take the position?

21 A. I was offered the appointment.

22 Q. Do you know why you were offered the
23 appointment?

24 A. Because Mr Wilson had left B.A.T Industries
25 plc.

1 Q. What are your duties and responsibilities as
2 Company Secretary?

3 A. Statutory duties of a Company Secretary under
4 the UK Companies legislation, in brief.

5 Q. And what are those in brief?

6 A. To ensure that the company complies with
7 various requirements under the Companies Acts in relation
8 to its constitution in relation to its shareholders and in
9 relation to the obligations which the company has by virtue
10 of being listed on the London Stock Exchange.

11 Q. How does that translate day-to-day into your
12 responsibilities? What is it that you do on a daily basis,
13 if you were to describe it to an outsider?

14 A. Every day is different.

15 Q. In general.

16 A. But basically the activities are governed by
17 the calendar of shareholder and Board meetings which are
18 held throughout each year, and the job involves making the
19 necessary preparations for each of those meetings,
20 attending those meetings, keeping the minutes of those
21 meetings. It also entails ensuring that the correct
22 statutory returns are made by the company. It also entails
23 ensuring that appropriate announcements are made in
24 relation to matters which have to be disclosed to
25 shareholders.

1 Q. All right. You supplied an affidavit in a
2 case that is currently pending in the State of Missouri of
3 the United States?

4 A. That is correct.

5 Q. Do you remember that?

6 A. I do.

7 Q. Have you recently reviewed that document?

8 A. I have.

9 Q. I apologize that I didn't bring an extra copy
10 of this for me. It has my highlighting so I am going to
11 give you my secrets, but we will at a break make a
12 photocopy and mark that as the first Exhibit to the
13 deposition, if that is acceptable to everyone. Is this a
14 copy of the affidavit that you signed?

15 A. It is.

16 Q. Is it in substantially the same form as the
17 one you reviewed this morning?

18 MR CUNHA: I don't think the witness said he
19 reviewed it this morning.

20 MR MCCLAIN: Reviewed it recently.

21 A. It is.

22 Q. Who prepared that document? Was it you or was
23 it prepared by counsel?

24 A. The first draft of it was prepared by my
25 counsel. I commented on it and corrected it as necessary

1 before swearing it.

2 Q. There is a handwritten change in the margin.
3 Did you make that change or am I thinking of Mr Cook's. It
4 may be Mr Cook's affidavit.

5 A. There does not appear to be a change on the
6 copy you have produced.

7 Q. I think that that is the other affidavit.

8 Can you tell me, as you prepared to sign this
9 affidavit, what sources of information you utilized to make
10 the statements that you provided the Court in that case?

11 A. A number of checks. First of all, my own
12 knowledge. Secondly, investigations that my counsel have
13 made on their document database, including the documents
14 which were produced in an earlier case involving the state
15 of Texas, and, thirdly, previous information checked by my
16 predecessor, Mr Wilson.

17 Q. And what form of information did you have to
18 get the information that Mr Wilson had checked?

19 A. Mr Wilson gave me a briefing before I took
20 over as Company Secretary of B.A.T Industries plc.

21 Q. What did he tell you in that briefing that was
22 useful to you in making this affidavit?

23 A. We discussed the content of affidavits he had
24 made in earlier cases.

25 Q. Specifically, what items within this affidavit

1 did you rely upon Mr Wilson when making the statements to
2 the Court that they were true to the best of your belief?

3 A. Paragraphs 4 to 7. Those are the only
4 paragraphs which I specifically looked to have confirmed by
5 Mr Wilson.

6 Q. Thank you very much. Did he review this
7 affidavit and confirm for you that it was correct, or that
8 you recalled what he told you when making this affidavit?

9 MR CUNHA: Object to the form. There are
10 obviously other possibilities besides those two.

11 MR MCCLAIN: If there are other possibilities
12 please tell me about them. In other words -- maybe it was
13 a bad question. How specifically did you rely upon
14 Mr Wilson in making the statements that you swore to the
15 Court were true to the best of your knowledge in paragraphs
16 4 through 7? Was it that he reviewed them specifically or
17 was it by some other means?

18 A. The text of those paragraphs is similar to the
19 text of other paragraphs in other affidavits sworn in other
20 litigation, and when I met with Mr Wilson we discussed that
21 text.

22 Q. So in regard to this specific affidavit you
23 did not have a discussion with Mr Wilson, am I correct?

24 A. That is correct.

25 Q. It is that he swore to similar statements in

1 previous affidavits that you are relying upon here?

2 MR CUNHA: Objection, because the witness
3 mentioned that it was the text, and the circumstance that
4 he discussed the text with Mr Wilson.

5 MR MCCLAIN: With that clarification, is it
6 correct that it was the discussion about the previous
7 affidavits that you are relying upon here in making this
8 affidavit?

9 A. In relation to those paragraphs, yes.

10 Q. Did you review any other Corporation documents
11 in regard to paragraphs 4 through 7 in assuring yourself
12 that these statements were accurate?

13 A. No, I read the Exhibit to the affidavit, which
14 is the copy of the Scheme of Arrangement dated 19th July
15 1976.

16 Q. Did you review any other documents?

17 A. In relation to those paragraphs, no.

18 Q. Did you review any statements that had been
19 made to third parties regarding B.A.T Industries plc,
20 regarding paragraphs 4 through 7?

21 A. No.

22 Q. Did you discuss with senior management the
23 statements that you made in paragraphs 4 through 7, other
24 than your previous discussion that you told me about with
25 Mr Wilson?

1 A. No.

2 Q. We are going to come back to the affidavit so
3 keep it in front of you, but for a moment you mentioned the
4 Tobacco Securities Trust a moment ago. Let us mark this as
5 Exhibit 2.

6 (Exhibit 2 marked by the Reporter).

7 This is a document that bears Mr Wilson's name on
8 the last page, I believe your predecessor as you described
9 him, outlining a brief history of B.A.T Industries and
10 other subjects. Are you familiar with this document?

11 A. I don't recall having seen it before.

12 Q. If you would take a minute and review it for
13 me, I would like to ask you some questions about its
14 content. (Pause.) Have you reviewed the document?

15 A. I have read the document.

16 Q. Do you believe that it is accurate?

17 MR CUNHA: Object to the form of the question,
18 since it is compound in the sense that there are probably
19 hundreds of facts contained within the document.

20 MR MCCLAIN: Did you see anything in the
21 document that was inaccurate?

22 MR CUNHA: Same objection. You may answer.

23 A. There is, I have spotted at least one
24 mistake.

25 MR MCCLAIN: What is that?

1 A. In the second paragraph it is stated that
2 "Mr Duke was forced to divest himself of certain interests
3 which included British-American Tobacco, no doubt due to
4 the its ownership of Brown & Williamson in the US." My
5 recollection of the facts is that the divestiture took
6 place in 1911 and Brown & Williamson was not acquired by
7 British-American Tobacco Company Limited until I think
8 1927.

9 Q. I want to call your attention to the -- is
10 that the only thing that you observed that you did not
11 agree to?

12 MR CUNHA: Could you rephrase the question?

13 MR MCCLAIN: Did you see any other inaccuracies
14 in this document.

15 MR CUNHA: Same objection to form, but you may
16 answer.

17 A. Not that I can see at a first glance.

18 Q. In your affidavit you state that in paragraph
19 6, and I will hand it to you in a minute for you to confirm
20 it, the July 23, 1976 transaction did not entail the
21 combination of two companies to form a new Corporation. Do
22 you see that statement, paragraph 6.

23 A. Sorry, I was looking at the wrong paragraph.
24 I see the statement.

25 MR CUNHA: Read the whole paragraph, please.

1 MR MCCLAIN: On page 2 of the document authored
2 by Mr Wilson he says:

3 "In 1976, following a Scheme of Arrangement
4 approved by the Court, British-American Tobacco was merged
5 into Tobacco Securities Trust Company, which changed its
6 name to B.A.T Industries."

7 Is that a true statement?

8 A. As I said earlier, I relied on Mr Wilson in
9 relation to this matter.

10 Q. So his statement within this document of
11 Exhibit 2 would be credible by you?

12 A. Yes.

13 Q. Looking at what we will now mark as Exhibit 3,
14 I want to see if this document can be helpful in
15 understanding both the pre-Scheme Arrangement in terms of
16 company ownership and the post Scheme Arrangement. Would
17 you please mark that as Exhibit Clarke 3.

18 (Exhibit 3 marked by the Reporter).

19 MR CUNHA: Do you want him to read the text as
20 well or just locate --

21 MR MCCLAIN: It is all part of the document. He
22 may as well. If there is a problem -- I really want to
23 focus on the chart but if you want. I didn't separate the
24 document. That is the way it was produced to us, from
25 whatever source.

1 (Discussion off the record.)
2 Q. Are you done reviewing the document.
3 A. Yes.
4 Q. Looking at the charts first, not the text, is
5 this to your understanding a correct graphic depiction of
6 the BAT Group structure, pre-scheme so called?
7 MR CUNHA: Object to the question on grounds of
8 lack of foundation.
9 A. I have no reason to believe it is not.
10 MR MCCLAIN: Does it comport with your
11 understanding of the pre-scheme structure of the companies.
12 MR CUNHA: Same objection.
13 A. As far as I am aware, yes.
14 MR MCCLAIN: The second page purports to be a
15 post Scheme of Arrangement. Is that your understanding of
16 the way that the company was, the BAT Group was organized
17 in regard to tobacco post scheme.
18 MR CUNHA: Same objection, lack of foundation.
19 A. I am not sure whether it purports to contain
20 all the intermediate holding companies.
21 MR MCCLAIN: But in essence the major companies,
22 absent intermediate holding companies, are contained on
23 this page, as far as you understand it?
24 MR CUNHA: Same objection.
25 A. As far as I understand it.

1 MR MCCLAIN: Is this post Scheme of Arrangement
2 still the way that the company is organized today, or has
3 there been a further reorganization of the company?

4 A. There have been many changes since the Scheme
5 of Arrangement.

6 Q. And in what year did -- strike that. As it
7 stands today, are you aware of a chart which shows the
8 current ownership of the BAT Group tobacco interests?

9 A. Yes.

10 Q. Is that in your possession?

11 A. Now? No.

12 Q. Not presently in this room but is it within
13 your possession at the company offices?

14 A. Yes.

15 Q. Could you provide it to me if your counsel
16 would allow it?

17 A. Yes.

18 Q. I would like to have a copy of it if it is
19 possible. Maybe at a break you could enquire about it.

20 MR CUNHA: I am not sure whether such a thing
21 has not already been produced.

22 MR MCCLAIN: It may have been but it would -- it
23 may not have been either.

24 MR CUNHA: If it has not been and we can lay our
25 hands on it and it is what the witness says it is we would

1 not have any objection to producing it, although we would
2 note that under case law current information, meaning
3 information subsequent to the date of the filing of the
4 complaint, is not relevant to the jurisdictional enquiry,
5 but obviously to the extent that the chart reflects the
6 organization of the company at the time of the filing of
7 the complaint or shortly before that time then it would be
8 within the relevant time period.

9 MR MCCLAIN: Does the chart that you are
10 referencing entail the so called Battalion reorganization
11 of the company? Is it coterminus with that organization,
12 as you understand it?

13 A. The chart I have in mind is one which was
14 published in May of this year and therefore postdates
15 Project Battalion.

16 Q. Do you have, do you know, do you have any
17 organization at or about the time of the implementation of
18 Project Battalion?

19 A. I do not understand the question.

20 Q. Do you have a chart which would reflect the
21 organization of the company at or about the time of Project
22 Battalion?

23 A. There may be one in the company records.

24 Q. I would -- that one would be the most relevant
25 document if it exists. If I could see both of them I could

1 tell you, you know. It might be helpful to us at this
2 time. So if you can make an enquiry.

3 MR CUNHA: We will look for additional charts
4 but let me say this. To the extent that we have charts
5 that show the organization of the company at or shortly
6 before the time of the filing of the complaint, we would
7 not object to disclosing those. To the extent the charts
8 show organizational changes post filing of the complaint,
9 we think it is clear under the case law they are not
10 relevant and we would have an objection to those.

11 MR MCCLAIN: But you would not have an objection
12 to producing them under the Court's order in regard to
13 documents which might lead to the discovery of admissible
14 evidence, would you?

15 MR CUNHA: Well, certainly we are prepared to
16 produce documents that lead to discovery of admissible
17 evidence. The only point I make is that there is authority
18 directly on point that factual information subsequent to
19 the filing of a complaint is not relevant for
20 jurisdictional purposes, and that is why we are here today.

21 MR MCCLAIN: I understand that perfectly, but we
22 may be able to find some documents within these Project
23 Battalion documents which might illuminate us.

24 MR CUNHA: I would say this. There are Project
25 Battalion documents that have been produced to the world.

1 There are organizational charts that were part of the Texas
2 set, so I am not certain by any means that you don't
3 already have the charts that you need.

4 MR MCCLAIN: I may have them and we will see
5 where we are, but at a break I would like to look for the
6 one that the witness is referencing to see if it is the one
7 that I have seen, or maybe we will discover during the
8 course that it is, and the witness will identify it, but
9 nonetheless if the witness has a chart that I have not seen
10 I would like to know about it.

11 Now, in regard to the text of this Exhibit,
12 number 3, Mr Clarke, first of all, have you seen this
13 document before today?

14 A. I don't recognize it.

15 Q. Do you believe in -- looking at the document,
16 did you note any inaccuracies within it in regarding to the
17 history of BAT company and TST?

18 MR CUNHA: Objection, compound.

19 A. I have not noticed any points in relation to
20 BATCo, although there is an inaccuracy in relation to B.A.T
21 Industries.

22 Q. What inaccuracy do you note?

23 A. In the first paragraph it says that B.A.T
24 Industries announced its acquisition of American Tobacco
25 from American Brands. The acquisition was in fact made by

1 Brown & Williamson.

2 Q. Do you know whether or not announcements to
3 the public indicated that BAT in fact had acquired American
4 Brands and not Brown & Williamson?

5 MR CUNHA: When you say "BAT" to which entity
6 are you referring?

7 MR MCCLAIN: B.A.T Industries?

8 A. I have not seen or checked the public
9 announcements.

10 Q. So if B.A.T Industries announced that it had
11 acquired American Brands, that is unknown to you at this
12 time?

13 A. That is correct.

14 Q. Anything that you observe as being inaccurate
15 in the paragraph marked "TST", in the section marked "TST"?

16 A. Nothing strikes me as inaccurate, from my own
17 knowledge.

18 Q. Put that to the side for the moment. Let us
19 mark this document as Exhibit Clarke Exhibit 4.

20 **Exhibit 4 marked by the Reporter. (Pause.)**

21 Q. Are you familiar with this document?

22 A. I don't recall seeing it before.

23 Q. Can you verify the accuracy of the information
24 on it?

25 A. Without checking the company's books, not at

1 this moment in time.

2 Q. Do you believe, based on your recollection,
3 that it is accurate?

4 A. It would appear to be accurate.

5 Q. In what capacity did Mr Pritchard, Mr RJ
6 Pritchard, listed as the last listing on this document,
7 serve within B.A.T Industries? Do you know?

8 A. As a director.

9 Q. Did he have any status as an officer or as an
10 employee?

11 A. No.

12 Q. Do you know why he served on the Board of
13 Brown & Williamson Tobacco Company?

14 MR CUNHA: Object to the form of the question.
15 I am not sure what you are asking frankly.

16 MR MCCLAIN: Do you know how he was appointed to
17 the Board of Brown & Williamson Tobacco Company?

18 A. Not personally.

19 Q. Do you have a belief about that subject?

20 A. I believe he was appointed as Chief Executive
21 Officer.

22 Q. Was it in that capacity that he served on the
23 Board of both B.A.T Industries and BATCo?

24 MR MCCLAIN: I object to the form of the
25 question. Again, I am not sure what you are asking.

1 MR MCCLAIN: Let me ask it this way. Did the
2 chief operating officers of the operating companies within
3 the BAT Group serve on the Board of B.A.T Industries and
4 BATCo to your understanding?

5 A. No.

6 Q. How were directors of B.A.T Industries and
7 BATCo selected?

8 MR CUNHA: In what period of time are you
9 asking?

10 MR MCCLAIN: Within the time period of this
11 document, between 70 and/or between 60 and 96.

12 MR CUNHA: I object on grounds of lack of
13 foundation.

14 MR MCCLAIN: If you know.

15 A. My knowledge does not go back that far.

16 Q. Based on your discussions with Mr Wilson or
17 others, how far back does your understanding go?

18 MR CUNHA: On this issue?

19 MR MCCLAIN: Yes.

20 A. My understanding probably goes back to about
21 mid-80s.

22 Q. My question -- how from the mid-80s were they
23 selected?

24 A. Dealing with B.A.T Industries first, the Board
25 of B.A.T Industries would select who it wished to appoint

1 as directors of that Board, and they would then come up for
2 reelection at the following Annual General Meeting of the
3 shareholders. As far as the directors of British-American
4 Tobacco Company Limited are concerned, any directors of
5 that company would be approved by B.A.T Industries, but
6 they would then be elected by the Board of that company and
7 again reappointed at the subsequent Annual General Meeting
8 of British-American Tobacco Company Limited.

9 Q. Was there ever a time from the mid-80s on that
10 the chief operating officer of Brown & Williamson Tobacco
11 Company did not sit on the Board of B.A.T Industries?

12 A. It would appear from this chart that
13 Mr Pritchard was appointed to the Board of B.A.T Industries
14 on the 1st April 1990, although he was appointed as a
15 director of Brown & Williamson Tobacco Corporation on the
16 15th May 1985.

17 Q. He had previously served as a director of
18 BATCo from 1977, according to this chart?

19 A. Is that the question?

20 Q. Is that correct? I am reading that chart
21 correctly?

22 A. That is my understanding.

23 Q. Do you know what position he held within Brown
24 & Williamson Tobacco Company if any in 1977?

25 A. My understanding is that he was not in Brown &

1 Williamson Tobacco Corporation in 1977.

2 Q. What was his position -- what company was he
3 with, do you know?

4 A. In 1977 from this chart it appears that he was
5 with British-American Tobacco Company Limited.

6 Q. And how do you gain that understanding from
7 this chart?

8 A. From the third column of the dates on the
9 second page.

10 Q. Do you know what position he held within
11 British-American Tobacco Company Limited?

12 A. I am not aware of the exact positions that he
13 may have held.

14 Q. This we will mark as Exhibit Clarke 5.

15 **(Exhibit 5 marked by the Reporter.)**

16 Do you need a break?

17 A. I am all right for a few minutes.

18 Q. I am only providing these to you -- I do not
19 have any questions about policies on outside directorships.
20 I just want to turn to the chart attached here because it
21 was in a different format.. I believe it is the same chart.
22 Can you verify that for me?

23 A. It bears the same reference and appears to be
24 the same chart.

25 Q. Okay. Now, do you have any responsibility, Mr

1 Clarke, for statements which are made to other companies
2 about the nature of the BAT Group or B.A.T Industries plc?

3 A. Who are you referring to in making
4 statements?

5 Q. To the capital markets, to securities,
6 regulatory bodies, anything like that?

7 A. My responsibility is to ensure to the best of
8 my knowledge and belief that all announcements made to the
9 Stock Exchange in London are accurate. I am referring
10 there to statements made by B.A.T Industries plc.

11 Q. Okay. Let us mark this as Exhibit Clarke 6.

12 **(Exhibit 6 marked by the Reporter.)**

13 A. Do you require me to review the whole of this
14 document.

15 Q. No, well you can review any of it that you
16 would like. I want to refer you to this statement in
17 Exhibit number 6. I recognize that this document is dated
18 December 7th 1988, which precedes your term by 3
19 years. This document states that:

20 "B.A.T Industries plc is a major worldwide
21 company, whose subsidiaries and associates, the group,
22 operate in some 90 companies (sic) and have over 300,000
23 employees worldwide".

24 Do you see that statement?

25 A. I do.

1 Q. Do you believe that that is an accurate
2 statement?

3 A. I have no reason to believe that it is not an
4 accurate statement.

5 Q. Did you review this before affirming the
6 statements that you caused to be made in paragraphs 4
7 through 7 of your affidavit?

8 A. I have not seen this document before today.

9 Q. It goes on to say:

10 "It is involved in four major business
11 activities; two manufacturing tobacco and paper and two
12 service businesses, retailing and financial services."

13 Then it goes on. Do you see that?

14 A. Yes.

15 Q. Do you believe that that was an accurate
16 statement as of 1988?

17 MR CUNHA: Would you please define "it". It can
18 get confusing if we don't use the terms as they are being
19 used in the documents.

20 MR MCCLAIN: I just read the statement.

21 MR CUNHA: Then you should read the first
22 sentence to make it clear what the "it" refers to in the
23 document.

24 MR MCCLAIN: I did read the first statement. I
25 know you don't have a computer in front of you but if you

1 read my question it specifically -- I read the first
2 sentence and then the second.

3 MR CUNHA: Then you have misread it, sir.

4 MR MCCLAIN: We will go back, let's see it, to
5 the point where I read "B.A.T Industries plc".

6 MR CUNHA: No, it is just the transcription, and
7 also the group should be in parentheses in quotes, and I
8 missed that, and I think you said "companies" and I don't
9 think you meant to say "companies".

10 MR MCCLAIN: If I said "companies" I meant
11 "countries".

12 MR CUNHA: I don't want to be picky.

13 MR MCCLAIN: Let's read the statement from the
14 beginning then. Do you believe that this statement is
15 correct:

16 "B.A.T Industries plc is a major worldwide
17 company whose subsidiaries and associates ('the group')
18 operated in some 90 countries and have over 300,000
19 employees worldwide. It is involved in four major business
20 activities: Two manufacturing tobacco and paper and two
21 service businesses, retailing and financial services".

22 Did I read that accurately, first of all?

23 A. You did.

24 Q. Secondly, as of December 7, 1988, you believed
25 that that was an accurate statement?

1 MR CUNHA: Object because of lack of foundation
2 for this witness, but you may answer.

3 A. The statement is correct but you should
4 understand that it refers to the group being involved in
5 those major business activities. I should also add that as
6 I was not in the group in 1988, I can't say whether four is
7 the correct number. I would draw your attention to the
8 fact that in the last page of this Exhibit, page 6, that it
9 is made clear that the information has been obtained from
10 sources which the authors believed to be reliable,.
11 However, they make no representation as to either the
12 completeness or the accuracy of that information.

13 Q. Under this statement "Tobacco", the heading
14 "Tobacco", do you see where I am in the document?

15 A. Yes.

16 Q. It is underlined:

17 "Tobacco: The group is a major international
18 tobacco manufacturer with operations in over 50 countries
19 producing over 275 cigarette brands and a wide range of
20 cigars and tobaccos. Its tobacco products are sold in some
21 150 countries and international duty free markets and the
22 group markets the leading cigarette brand in over 30
23 countries. Major international brands include Benson and
24 Hedges, Kent, State Express, 555, Gold Leaf, Viceroy, John
25 Player Special, Lucky Strike, Pall Mall, Barclay and Kool."

1 Did I read that accurately?

2 A. You did.

3 Q. Is that an accurate statement as far as you
4 are concerned?

5 MR CUNHA: Objection, lack of foundation.

6 A. As I said earlier, I was not part of the B.A.T
7 Industries Group in 1988, but I have no reason to believe
8 that it is inaccurate.

9 Q. Let me hand you what we have marked as Exhibit
10 7.

11 (Exhibit 7 marked by the Reporter).

12 This document is a Merrill Lynch Money Markets
13 Inc credit report. Are you familiar with it?

14 A. I have not seen it before today.

15 Q. Do you see on the second page "B.A.T
16 Industries plc". I am sorry, it is the third, the page
17 marked third at the bottom, "B.A.T Industries plc". Do you
18 see where I am?

19 A. That page.

20 Q. Yes. Do you see that the statement at the top
21 --

22 A. Yes.

23 Q. -- is substantially the same statement that I
24 read to you previously?

25 A. Yes.

1 Q. Do you believe that the statement contained in
2 this document like the previous statement is correct?

3 MR CUNHA: You have not specified what statement
4 you are asking him about. To the extent that --

5 MR MCCLAIN: The same one I read him last time.
6 I will read it again if you want me to.

7 MR CUNHA: I don't think there is any reason to
8 do that, but I think you already have his testimony with
9 respect to the statement. I do not see what more he can
10 add.

11 MR MCCLAIN: Then just let him add it.

12 A. I have nothing further to add.

13 Q. It would certainly be within the purview of
14 the Company Secretary to contact persons involved in the
15 financial markets, and in regard to the stock markets to
16 correct such statements if they were inaccurate, would it
17 not?

18 A. I would expect so though, as I said before,
19 this document predates my term of office.

20 Q. So that would have been Mr Wilson's
21 responsibility?

22 A. No, he was not the Company Secretary in 1988.

23 Q. Who was?

24 A. I would need to check the company records.

25 Q. Whoever it was, that would be that person's

1 responsibility; am I correct?

2 A. I don't know.

3 Q. Did the duties of the Company Secretary change
4 between 1988 and the time you took office in 1991?

5 MR CUNHA: Could I ask what company you are
6 asking about now?

7 MR MCCLAIN: B.A.T Industries plc?

8 A. I didn't take office in 1991. I took office
9 in 1997 as Company Secretary of B.A.T Industries plc. I am
10 not aware what changes in practices and procedures may have
11 taken place between 1988 and 1997.

12 Q. You, as a solicitor, know what the duties and
13 responsibilities of a Company Secretary are, as you told me
14 initially?

15 A. Correct.

16 Q. It is the Company Secretary's responsibility
17 under the British Companies Act to correct inaccuracies
18 being made to financial markets, including the stock
19 markets. Am I correct?

20 A. If I may respond in relation to the Exhibit in
21 front of me, the Exhibit in front of me is a document which
22 is put out by Merrill Lynch, not by B.A.T Industries plc.

23 Q. So it would be your testimony that if the
24 Company Secretary observed inaccuracies in statements being
25 put forward by marketers of your securities, there would be

1 no responsibility on the part of the Company Secretary to
2 correct those inaccuracies?

3 A. To the extent that an outside third-party is
4 reproducing information provided by B.A.T Industries plc, I
5 would expect the Company Secretary to draw that inaccuracy
6 to the attention of that third-party, but I should add that
7 this document which you are referring to is a document put
8 out by BAT Capital Corporation, which was a US company, a
9 subsidiary of B.A.T Industries plc, and it would therefore
10 be the responsibility of the Company Secretary of that
11 company to check the accuracy of any offer documents made
12 by that company.

13 Q. As the current Company Secretary of B.A.T
14 Industries plc, do you rely upon the diligence and accuracy
15 of the company secretaries of the subsidiaries to ensure
16 that statements being made by the subsidiaries are
17 substantially correct?

18 A. That is a very wide question. In relation to
19 matters which involve B.A.T Industries plc I would rely not
20 only on my own knowledge but on due diligence performed by
21 others within the company.

22 Q. But you would certainly expect that
23 subsidiaries of B.A.T Industries plc would not be
24 misrepresenting the nature of the company to the outside
25 world. Am I correct?

1 A. Are you referring to subsidiaries of B.A.T
2 Industries plc misrepresenting the activities of B.A.T
3 Industries plc?

4 Q. That is correct.

5 A. I would certainly hope that they did not
6 misrepresent such activities.

7 Q. As Company Secretary you would have the
8 ability to see to it that subsidiary companies were not
9 misrepresenting the nature of the business of B.A.T
10 Industries plc, would you not?

11 A. No.

12 Q. You would not have the ability through the
13 chain of command to see that that was not happening?

14 A. Not necessarily.

15 Q. Are you completely powerless to correct
16 inaccurate statements by subsidiary companies?

17 A. The subsidiary companies have their own Boards
18 of Directors and managements and I would hope that when
19 they speak to third parties about B.A.T Industries plc they
20 would check the accuracy of the information before
21 publication.

22 Q. Have you ever known a subsidiary to make
23 inaccurate statements about B.A.T Industries plc?

24 A. Statements to whom?

25 Q. To third-parties.

1 A. What sort of third-parties?

2 Q. Members of the financial markets?

3 A. I am not aware of any.

4 Q. Or regulatory agencies?

5 A. Again, I am not aware of any.

6 Q. Let us mark this as Exhibit Clarke 8.

7 **(Exhibit 8 marked by the Reporter.)** (Pause).

8 What we have marked as Exhibit 8 is a BAT Capital
9 Corporation private placement memorandum, which represents
10 that it was unconditionally guaranteed by B.A.T Industries
11 plc, private placement of medium term notes of a billion
12 dollars. If you will turn to the page headed "Use of
13 Proceeds", which bears the number at the bottom of the page
14 of 07020, would this have been a document, based on your
15 understanding, because it was unconditionally guaranteed by
16 B.A.T Industries plc, that would have been seen and
17 reviewed by somebody within BAT plc.

18 MR CUNHA: Objection, no foundation, and it
19 calls for speculation.

20 A. I would have expected this document to have
21 been reviewed by senior staff of B.A.T Industries plc.

22 MR MCCLAIN: You see under "Tobacco", where it
23 says:

24 "BAT is the world's most international tobacco
25 manufacturer, whose products are sold in some 160 countries

1 and international duty free markets. The group sells the
2 leading brand in over 30 markets and worldwide sells more
3 than 500 billion cigarettes each year. Leading
4 international brands include Benson and Hedges, Kent, State
5 Express, 555, Players, Gold Leaf, Lucky Strike, Barclay,
6 Capri and HB".

7 A. Yes, I have seen that statement.

8 Q. Mr Wilson would have been the Company
9 Secretary at this time?

10 A. I do not believe so. I believe Mr Wilson
11 joined the company in 1993.

12 Q. You were at BATCo in 1991, is that correct?

13 A. Not until September of that year.

14 Q. I had the 1991 date stuck in my mind and I was
15 thinking it was Mr Wilson but you had a 1991 date and I
16 apologize.

17 A. I joined British-American Tobacco Company
18 Limited in 1991.

19 Q. I apologize for my confusion. In any event,
20 it would have been the Company Secretary's responsibility
21 to correct any misstatements going to the financial
22 markets, am I correct, in 1991?

23 A. It would have been the responsibility of the
24 Board of the issuing company, which was BAT Capital
25 Corporation.

1 Q. But if B.A.T Industries plc as the
2 unconditional guarantor found misstatements within such a
3 document, it would have had a responsibility to correct
4 those misstatements before they went to the financial
5 markets; am I correct?

6 MR CUNHA: May I object to the word
7 "responsibility" because I am not sure what you mean by
8 that. Particularly in a regulated environment, which we
9 are discussing now, I think it is significant, or it may be
10 significant. You may answer.

11 A. I am not certain of the obligations that the
12 Company Secretary of B.A.T Industries plc as the guarantor
13 of this issue would have had under the United States law,
14 as I imagine that this issue was made subject to US law.

15 Q. Do you believe in the regular course of
16 business, based on your understanding of the way the
17 company operates today, senior management would have
18 allowed knowing misstatements to be circulated to the
19 capital markets in the US?

20 A. I am reasonably confident that no knowing
21 misstatement would have been made.

22 Q. Exhibit 9.

23 **(Exhibit 9 marked by the Reporter).**

24 This is a 1992 offering circular for 200 million
25 dollars from BAT Capital Corporation unconditionally

1 guaranteed by B.A.T Industries plc. Going over to the
2 "B.A.T Industries Group" heading on page 3 of the
3 document, are you with me?

4 A. Yes.

5 Q. "This document represents the B.A.T Industries
6 Group (the BAT Group) as one of the UK's leading business
7 enterprises, with interests principally in tobacco and
8 financial services. It operates in more than 80 countries
9 and has over 200 employees worldwide."

10 A. "200,000 employees".

11 Q. "200,000 employees worldwide".

12 MR CUNHA: Do you want to finish reading the
13 paragraph.

14 MR MCCLAIN: "The BAT Group has its headquarters
15 in London England and acts as a holding company for the
16 other companies in the BAT Group, including BATCAP."

17 The next sentence says:

18 "The BAT Group is a leading international tobacco
19 manufacturer with an estimated global market share of 10.5
20 per cent in 1991."

21 Do you see that statement?

22 A. I do.

23 Q. Do you believe it was accurate at the time?

24 MR CUNHA: Objection, lack of foundation. You
25 may answer.

1 A. I have no reason to believe that it is
2 inaccurate. The BAT Group of course refers to all its
3 subsidiaries worldwide.

4 Q. It goes on to say:

5 "It is the world's most international cigarette
6 manufacturer, whose products are sold in approximately 160
7 countries and international duty free markets. The BAT
8 Group sells the leading brands in 30 markets and its annual
9 volume exceeds 550 billion cigarettes, while exports total
10 over 100 billion units. Leading international brands
11 include Kent, Benson and Hedges, State Express, 555, Lucky
12 Strike, Players, Gold Leaf, Barclay, Capri and HB."

13 Did I read that accurately?

14 A. Yes.

15 Q. Do you believe that was an accurate statement
16 at the time?

17 MR CUNHA: Objection, lack of foundation.

18 A. I have no reason to believe that this
19 statement is inaccurate.

20 MR MCCLAIN: Did you review this document or the
21 last document, Exhibit 8, before you made the statements
22 that you certified to the Court in Exhibit -- in your
23 affidavit in paragraphs 4 through 7?

24 A. I have not seen these two documents prior to
25 today.

1 Q. Let us go to Exhibit 10.

2 (Exhibit 10 marked by the Reporter.)

3 Looking at Exhibit number 10, this is another
4 private placement memorandum offering BAT Capital
5 Corporation notes in the amount of 250 million dollars
6 unconditionally guaranteed by B.A.T Industries plc, dated
7 April 22nd 1993.

8 Turning to page 7 of the offering circular, there
9 is a description which is virtually identical to the last
10 one we read of the B.A.T Industries Group. Do you see it?

11 A. Yes.

12 Q. Did you review this document before making
13 your affidavit?

14 A. No.

15 Q. Let us go to Exhibit 11.

16 (Exhibit 11 marked by the Reporter). (Pause).

17 Who is Sir Patrick Sheehy?

18 A. Sir Patrick Sheehy was Chairman of B.A.T
19 Industries plc in May 1993, the date of the document.

20 Q. Are you familiar with this type of document?

21 A. I am.

22 Q. Financial News. What is this document?

23 A. This is the quarterly report issued by B.A.T
24 Industries.

25 Q. Is it a document which you are responsible for

1 ensuring its accuracy?

2 MR CUNHA: You mean current conditions.

3 MR MCCLAIN: Yes.

4 A. I would participate in the preparation of this
5 document.

6 Q. Was Mr Wilson involved at this date, May of
7 1993?

8 A. I may draw your attention to the last page of
9 this document. The Company Secretary at that time was
10 Mr PC Godby.

11 Q. Do you believe that it was Mr Godby's
12 responsibility on 5th May 1993 to ensure the accuracy of
13 this document?

14 A. If the same procedures applied then as apply
15 now, I would have expected Mr Godby to have participated in
16 the preparation of this document.

17 Q. Do you see that this document discusses the
18 sale of tobacco products that were being sold by companies
19 within the BAT Group worldwide?

20 A. Yes.

21 Q. Over at page 2 at the bottom of the page, it
22 says:

23 "In the US domestic market where there has been a
24 price law for a number of years, our GPC approved brand has
25 become the fourth best selling cigarette in the home market

1 and number 1 in the value for money segment. The group's
2 success in the value for money, the category which now
3 accounts for almost 40 per cent of the market, has been an
4 important element in our ability to achieve growth in both
5 volume and profit."

6 Do you see that statement?

7 A. I do.

8 Q. Did you review this document before making
9 your affidavit to the Court and the representations which
10 you made in paragraphs 4 through 7?

11 A. Not specifically, although I will have seen
12 this document when it was first issued.

13 Q. In your role as Secretary of --

14 A. Well, I dare say that I actually saw it in my
15 role as a shareholder in B.A.T Industries plc.

16 Q. I appreciate you bringing that out. I didn't
17 ask you that question initially. Are you in fact a
18 shareholder of BAT plc?

19 A. B.A.T Industries plc, yes.

20 Q. Could I see your affidavit for a moment.

21 (Handed.) How many shares do you own?

22 A. I cannot give you an accurate answer to that
23 question without checking my own investment records.

24 Q. Can you give me any range so that we can
25 understand the magnitude of your holdings?

1 A. It would be approximately less than 10,000
2 pounds.

3 Q. In paragraph 3 you represent that "B.A.T
4 Industries is a holding company that has never
5 manufactured, marketed, packaged, sold, distributed or
6 advertised tobacco products or any other goods or products,
7 sold or intended for sale in the State of Missouri or
8 anywhere else", did you not?

9 A. I did, that is correct.

10 Q. Did you review any of the documents that we
11 have seen this morning before making that statement to the
12 Court in Missouri?

13 A. None of the documents which you have tabled
14 this morning.

15 Q. Let us mark this as Exhibit 12.

16 **(Exhibit 12 marked by the Reporter.) (Pause.)**

17 Specifically under the "B.A.T Industries" heading
18 is what I am referring to. Do you know Mr Anthony Holliman?

19 A. I do.

20 Q. Does he still work for B.A.T Industries plc?

21 A. He does.

22 Q. Is he still the Assistant Secretary?

23 A. He is Senior Assistant Secretary now.

24 Q. So he reports directly to you?

25 A. He does.

1 Q. Do you see where this fellow Michael Curran is
2 sending him this advertisement, which was scheduled to
3 appear in the issue of Research Magazine?

4 A. Yes.

5 Q. Do you see where it says "Please advise if you
6 have any objections"?

7 A. Yes.

8 Q. And do you see there is a handwritten note
9 here:

10 "Ralph, any comments? A sentence about American
11 tobacco?"

12 A. Yes.

13 Q. Who is Ralph, if you know?

14 A. I assume that it is Mr Ralph Edmundson.

15 Q. What position did he hold?

16 A. I am not entirely certain as to his status in
17 1994.

18 Q. What position does he hold today?

19 A. He is Investor Relations Manager.

20 Q. Do you see on this page it says under the
21 heading "B.A.T Industries":

22 "B.A.T Industries is the world's most
23 international cigarette manufacturer, with an unrivalled
24 range of both international and domestic brands. The
25 principal operations are Brown & Williamson, the third

1 largest cigarette company in the US domestic market, with
2 an important export business, British-American Tobacco,
3 producing cigarettes in more than 45 countries for domestic
4 and export markets, and Souza Cruz in Brazil, the largest
5 domestic cigarette producer and one of the world's leading
6 exporters of leaf tobacco".

7 Did I read that accurately?

8 A. Yes.

9 Q. Have you ever been called upon to check
10 statements that appear in financial magazines?

11 A. Is your question directed at my time as
12 Secretary of B.A.T Industries plc?

13 Q. Or in your previous role at BAT Company
14 Limited?

15 A. At British-American Tobacco Company Limited?

16 Q. Yes.

17 A. I don't recall having checked any such
18 advertisement.

19 Q. But it certainly would have been within the
20 power of Mr Holliman to correct statements. In fact, in
21 this instance he was being solicited for a correction if
22 one was necessary. Am I right?

23 A. It would appear so.

24 Q. It does not appear from the documents we have
25 in front of us that he did correct anything in that

1 document, does it?

2 MR CUNHA: Objection. I don't think the
3 question can be answered. The way it is answered -- the
4 document does not include any response from Mr Holliman one
5 way or the other.

6 MR MCCLAIN: Do you believe that the statements
7 contained in that first document were true as of 1994?

8 A. I believe that they were true, but I should
9 point out that the very first sentence, which says that
10 B.A.T Industries is the world's most international
11 cigarette manufacturer, should be read in context with the
12 remainder of the advertisement, which explains that the
13 manufacturing operations are conducted by various
14 subsidiaries around the world.

15 Q. And the statement would lead one to believe
16 that in fact B.A.T Industries is in fact a manufacturer,
17 would it not?

18 MR CUNHA: Objection. The witness just
19 explained to the contrary. Why don't we just read back his
20 testimony.

21 MR MCCLAIN: That is not what he said at all.

22 MR CUNHA: He said it has to be read in context
23 to understand that the manufacturers are the operating
24 companies.

25 MR MCCLAIN: It states, does it not, that B.A.T

1 Industries plc is a manufacturer?

2 A. But it goes on to explain what those -- how
3 those operations are conducted, and they are conducted
4 through subsidiaries of B.A.T Industries plc, of which
5 Brown & Williamson is an indirect subsidiary.

6 Q. Is there any statement in there that B.A.T
7 Industries plc is merely a holding company?

8 MR CUNHA: I am going to object. The document
9 itself is the best evidence of its terms. I think you are
10 just arguing with the witness.

11 MR MCCLAIN: I am just asking a question.

12 A. There does not appear to be any such statement
13 in the advertisement.

14 Q. Let us mark the next Exhibit.

15 MR CUNHA: Could we take a break at this point.
16 We have been going a little over two hours.

17 (A short break.)

18 MR MCCLAIN: We are up to Exhibit 13.

19 (Exhibit 13 marked by the Reporter). (Pause.)

20 Have you seen a document like this before?

21 A. I have.

22 Q. It is published by B.A.T Industries?

23 A. It is.

24 Q. It bears the seal of the company on each page?

25 A. It bears the corporate logo of the company on

1 each page, not the seal.

2 Q. I am sorry, that has a technical term to the
3 Company Secretary?

4 A. Yes.

5 Q. It should be technical meaning, to correct
6 myself. This document published by the company states,
7 under "B.A.T Industries at a glance":

8 "The B.A.T Industries group is one of Europe's
9 largest business enterprises. It is the world's most
10 international tobacco manufacturer and a leading provider
11 of personal, financial and insurance services in the UK and
12 North America. Group companies operate in more than 90
13 countries and employ some 173,000 people."

14 Did I read that accurately?

15 A. You did.

16 Q. Look over at page 2, under "BAT is the world's
17 most international cigarette company." It says at bullet
18 point number 1:

19 "In 1994 BAT sold over 572 billion cigarettes,
20 increasing its market share of total world sales to 10.6
21 per cent".

22 Did I read that accurately?

23 A. You did.

24 MR CUNHA: I don't think it says "market", not

25 --

1 MR MCCLAIN: I am sorry, you are right. It
2 should read "increasing its share", not "market share".

3 Second bullet point:

4 "BAT cigarettes are available in almost every
5 country in the world and are manufactured in over 50
6 countries".

7 Did I read that accurately?

8 A. Yes.

9 Q. Third bullet point:

10 "In 1994 BAT's global cigarette volumes increased
11 by 4 per cent and its export volumes by 13 per cent."

12 Did I read that accurately?

13 A. Yes.

14 Q. "Over 52,000 people are employed by BAT's
15 tobacco operations around the world, excluding the
16 employees of associate companies".

17 Fifth bullet point:

18 "In 1994 BAT acquired American Tobacco Company
19 for US\$1 billion. Further successful investments were made
20 in strategically important new markets".

21 Did I read that accurately?

22 A. Yes.

23 Q. Did you review any of these statements before
24 making the representations in paragraphs 3 through 7 of
25 your affidavit?

1 A. I did not.
2 Q. Over at page 3:
3 "BAT offers a brand for every taste."
4 Bullet point number 1:
5 "BAT owns the top selling brand in over 30 of the
6 world's markets".
7 Did I read that accurately?
8 A. Yes.
9 Q. Second bullet point:
10 "BAT products include international, regional and
11 national brands."
12 Did I read that accurately?
13 A. Yes.
14 Q. "The Company's portfolio includes both Virginia
15 and American blend cigarettes."
16 Did I read that accurately?
17 A. Yes.
18 Q. Next bullet point:
19 "The unrivalled breadth gives BAT a marketing
20 advantage over its competitors."
21 Did I read that accurately?
22 A. It starts "This unrivalled breadth".
23 Q. Let's read it again. The fourth bullet point
24 reads:
25 "This unrivalled breadth gives BAT a marketing

1 advantage over its competitors."

2 Did I read that accurately?

3 A. Yes.

4 Q. The fifth bullet point says:

5 "In all, BAT sells about 250 brands, including
6 some of the world's best known cigarettes."

7 Did I read that accurately?

8 A. Yes.

9 Q. Did you review any of those statements before
10 making your representations to the court in paragraphs 4
11 through 7 of your affidavit?

12 A. No.

13 Q. Page 8 says:

14 "BAT is an international tobacco company with
15 more than 90 years of experience." Are you with me?

16 A. Yes.

17 Q. The first bullet point says:

18 "BAT has been involved in the tobacco business in
19 many countries throughout the world since its foundation in
20 1902. Working in varying conditions is part of BAT's
21 tradition."

22 Did I read that accurately?

23 A. Yes.

24 Q. Look over at page 16. First of all do you see
25 the photograph which is down at the bottom?

1 A. Yes.

2 Q. Holding up a package of Kool cigarettes?

3 A. It is not clear from the photograph on my copy
4 as to whether it is in fact a packet of cigarettes that is
5 being held.

6 Q. I am sorry, it is an advertisement for Kool
7 cigarettes, is it not, or a display?

8 A. It would seem to be, but it is a very poor
9 reproduction.

10 Q. I am only working with what I was given. The
11 caption reads "BAT sells some of the USA's best known
12 cigarettes", does it not?

13 A. It does.

14 Q. Now, at the top of the page, under the bullet
15 points, under the caption which reads "BAT is America's
16 third largest cigarette business", do you see that?

17 A. I do.

18 Q. And the first bullet point reads:

19 "BAT's tobacco operations in the USA are managed
20 by Brown & Williamson (B&W), which in 1994 sold over 55
21 billion cigarettes in the USA."

22 Do you see that?

23 A. I do.

24 Q. Do you see, look over at page 18. Under this
25 heading it lists "Canada's largest cigarette company is a

1 BAT associate." Do you see that?

2 A. Yes.

3 Q. And here it says "Imperial Tobacco, a BAT
4 associate", under the second bullet point. Are you with
5 me?

6 A. Yes.

7 Q. It reads, beginning again:

8 "Imperial Tobacco, a BAT associate, had over 65
9 per cent of Canada's domestic cigarette market in 1994."

10 Do you see that?

11 A. I do.

12 Q. Do you see that back at 16 again, where it
13 makes the representation that Brown & Williamson manages
14 BAT's US tobacco operations. Do you see that?

15 A. Yes.

16 Q. Did you review any of the statements that I
17 have just pointed out to you in making your representations
18 to the Court --

19 A. No.

20 Q. -- in 3 through 7. Look over at page 26. Page
21 26 makes it very clear, does it not, that BAT does not
22 itself own land for the cultivation of tobacco?

23 MR CUNHA: Objection, the document itself is the
24 best evidence of its terms.

25 MR MCCLAIN: Okay, let's do it the hard way.

1 The heading is "BAT is one of the world's largest leaf
2 exporters". Do you see that?

3 A. I do.

4 Q. The next bullet point is:

5 "BAT does not itself own lands for the
6 cultivation of tobacco, but is closely involved in growing,
7 curing processing and exporting tobacco leaf."

8 Do you see that?

9 A. I do.

10 Q. Did you review that statement before making
11 your affidavit to the court?

12 A. I did not.

13 Q. Is this document intended to be sent to the
14 public?

15 A. My understanding is that this is a document
16 prepared by the Public Affairs Department of B.A.T
17 Industries, and as such it would have a public
18 distribution, but I would like to make it clear that where
19 references to "BAT" are made it refers to the B.A.T
20 Industries Group of companies, and that is made abundantly
21 clear in the very first page.

22 Q. Well, that is really not true, is it? Looking
23 over at page 16, it does not have any reference to the
24 group, does it?

25 MR CUNHA: You have asked two questions. You

1 can separate them and ask him, but otherwise, as phrased, I
2 think it is argumentative and certainly compound, so I
3 object to the form.

4 MR MCCLAIN: With all respect, when the witness
5 volunteers information such as that -- my reaction perhaps
6 was argumentative, but just to make the question plain, is
7 there any reference on page 16 to the BAT Group?

8 A. As I have explained "BAT" is shorthand for the
9 BAT Group.

10 Q. Is there any reference on page 16 to that
11 statement?

12 A. Not explicitly.

13 Q. Nor is it explicit on page 2 or 3 where it
14 refers to BAT, am I correct?

15 MR CUNHA: You are asking him does it say -- I
16 want to make sure what you are asking. You are asking
17 "Does it say BAT equals BAT Group" on those pages?

18 MR MCCLAIN: That is right. Does it say that?

19 A. It does not say that on those particular
20 pages.

21 Q. Now, let us now turn to Project Battalion.
22 Are you familiar with Project Battalion?

23 A. I am.

24 Q. Let us mark this as Exhibit 14.

25 (Exhibit 14 marked by the Reporter). (Pause.)

1 Are you familiar with this document?
2 A. I am.
3 Q. Seen it before?
4 A. I have.
5 Q. Who is Ulrich Herter?
6 A. In 1995 he was Managing Director Tobacco of --
7 that was his title as a director of B.A.T Industries plc.
8 Q. Do you know Mr Herter?
9 A. I do.
10 Q. This document says "Welcome to the first
11 Battalion bulletin". Do you see that?
12 A. I do.
13 Q. And this document seeks to describe to other
14 members of the BAT Group of companies what Project
15 Battalion is all about, does it not?
16 A. Yes.
17 Q. It says that Project Battalion, on the second
18 page:
19 "What is the Battalion mission? Quite simply to
20 design an organization which will allow us to operate as a
21 cohesive tobacco company".
22 Do you see that?
23 A. I do.
24 Q. "The Project's aim is to achieve the greatest
25 possible degree of delegation with absolute, clear

1 accountability". Do you see that?

2 A. Yes.

3 Q. Do you see where it says "What is the scope of
4 Battalion?"

5 A. Yes.

6 Q. "Battalion is not simply about establishing a
7 Tobacco Board. In fact this could have been said to be a
8 relatively minor aspect of the exercise. It is also about
9 ensuring that the key decision and activities that yield us
10 competitive advantage or that have the potential to do so
11 are undertaken effectively across the group".

12 Do you see that?

13 A. I do.

14 Q. It talks about "Drive Teams". Do you see
15 that?

16 A. Where are you, which page?

17 Q. They are not numbered. Page 11831 at the
18 bottom, the Bates number.

19 A. I have found the reference.

20 Q. It says: "Are any drive teams considered more
21 important than others?

22 "Clearly marketing, including all the associated
23 processes, such as product development and logistic
24 linkages is an area which we must get right in order to
25 realize our goal. Along with manufacturing, leaf

1 operations and R&D, which together we are terming
2 'operations' during the Blueprinting Phase, it is an
3 activity which is fundamental to our business success."

4 Do you see that?

5 A. I do.

6 Q. Then it lays out these drive teams, does it
7 not?

8 A. Yes.

9 Q. And on the marketing drive team Mr John
10 Winebrenner from B&W is present, along with persons from
11 other companies that are listed in the document?

12 A. Yes.

13 Q. And then the operations drivers, Earl
14 Kohnhorst, and he was from B&W, was he not?

15 A. Yes.

16 Q. Randy Harrison from B&W, John Jewell from B&W
17 and Tilford Riehl from B&W, am I correct?

18 A. Yes.

19 Q. I am going to hand you what we have marked as
20 15.

21 **(Exhibit 15 marked by the Reporter.)**

22 This is another Battalion bulletin?

23 A. Yes.

24 Q. This is by Mr Herter again?

25 A. It is signed by him.

1 Q. He states in the first sentence:
2 "I am happy to report that Project Battalion
3 remains on schedule". Am I right?
4 MR CUNHA: Could we pause for a minute so the
5 witness can look at the whole document. Thanks.
6 MR MCCLAIN: Sure.
7 A. Can I refer back to my previous answer,
8 because this Exhibit which you have passed to me is in fact
9 two documents, not one.
10 Q. Point out to me where it changes.
11 A. The last two pages appear to be a separate
12 document.
13 Q. Yes, let us separate that from this document.
14 I don't know how it got put together.
15 MR CUNHA: Why don't we physically remove the
16 last two pages.
17 MR MCCLAIN: That would be fine. I don't know
18 whether or not I will use it. Are you familiar with this
19 document?
20 A. I am.
21 Q. Seen it before?
22 A. I have.
23 Q. Do you see here where he says in the middle of
24 the page:
25 "Secondly, there has been some

1 misinterpretations concerning what we mean by 'integrated
2 international tobacco company'. We must operate as a
3 single efficient and effective business, not four distinct
4 operating groups."

5 Do you see that?

6 A. I do.

7 Q. Do you see in the next paragraph that it
8 says:

9 "What we must have is a far greater degree of
10 consistent strategic direction in our worldwide operations
11 and across our key activities."

12 A. Yes.

13 Q. Did you review these statements before making
14 your affidavit?

15 A. I did not.

16 Q. Go over to the second page of this document.
17 Do you see here "Communicating Battalion"?

18 A. Yes.

19 Q. First bullet point:

20 We must establish a single integrated tobacco
21 company."

22 Do you see that?

23 A. Yes.

24 Q. Did you review this statement before making
25 your affidavit to the Court in Missouri?

1 A. As I have explained, I am familiar with the
2 document, as I saw it when it was first issued, but I did
3 not specifically look at it again before swearing my
4 affidavit.

5 Q. Counsel conferred with you in the last
6 second. Did he want you to clarify that answer?

7 MR CUNHA: Objection, calls for disclosure of a
8 privileged communication. Do not answer the question.

9 MR MCCLAIN: Just so we are clear, just before
10 you gave that answer, counsel did confer with you, did he
11 not?

12 MR CUNHA: Objection.

13 MR MCCLAIN: I am not arguing, I just want to
14 clarify to make the record clear.

15 MR CUNHA: If you want it on the record that I
16 conferred with the witness at a certain point in the
17 examination, fine.

18 MR MCCLAIN: Just before that last question and
19 answer, correct?

20 MR CUNHA: That is correct.

21 MR MCCLAIN: Thanks.

22 MR CUNHA: It is also correct that the witness
23 and I have conferred at other times throughout the
24 examination.

25 MR MCCLAIN: If you don't want me to ask any

1 more questions don't add things to the thing. I was not
2 trying to get into an argument. I was simply trying to
3 establish the record for whatever use I want to make of it.

4 MR CUNHA: Okay. I think the record should be
5 clear though that the witness and I did not confer while a
6 question was pending. You would agree with that, would you
7 not, counsel?

8 MR MCCLAIN: Yes, I agree with that. Let us mark
9 this as Exhibit 16.

10 (Exhibit 16 marked by the Reporter).

11 (Pause.) Do you see that this is a presentation
12 that Mr Herter made to the BATCo General Managers?

13 A. Yes.

14 Q. Did you happen to be present during this
15 presentation?

16 A. I may have been.

17 Q. It is not clear from the document as to the
18 date on which the presentation was given. Do you see that
19 at the end of the paragraph that begins "As Keith Dunt",
20 and then the sentence starts that I want to read you:

21 "As Battalion follows on logically from the move
22 to end market control, and it is about nothing less than
23 the requirement to change the structure of our
24 organization, so that tobacco can be managed as one
25 worldwide business".

1 A. Apart from the fact that the sentence does not
2 begin with the word "as", you have read that correctly.

3 Q. No, the paragraph begins "As Keith Dunt" is
4 what I was trying to say, but the sentence I want you to
5 focus on begins with "The Battalion" and proceeds --

6 A. Yes.

7 Q. Do you see over here where it says "support
8 consumers' freedom of choice to smoke"?

9 A. Whereabouts are you looking?

10 Q. At the bottom of the page marked at the top
11 page 9?

12 A. Yes.

13 Q. It says:

14 "One of the strategic imperatives that inevitably
15 involves a longer pay-back period is our commitment to
16 support consumers' freedom of choice to smoke. We do
17 intend to take a higher profile position internationally in
18 an attempt to 'get science back into the debate'".

19 Do you see that?

20 A. Yes.

21 Q. Did you understand that that was one of the
22 aims of Project Battalion, to support so called "consumers'
23 freedom of choice to smoke"?

24 A. It was one of the imperatives to support
25 consumers' freedom of choice to smoke, not "so called

1 consumers".

2 Q. It was "so called freedom of choice to smoke",
3 my term, not "so called consumers". I agree they are
4 consumers.

5 A. Okay.

6 Q. Let us mark Exhibit 17.

7 **(Exhibit 17 marked by the Reporter.)**

8 This is another Project Battalion document. Go
9 ahead and review it.

10 MR CUNHA: The document looks like it is about
11 40 pages long. Do you want him to read the entire
12 document?

13 MR MCCLAIN: No. (Pause.) Look over at the
14 production drive team. First of all --

15 A. I have not quite finished turning the pages.

16 Q. Tell me whenever you are ready.

17 A. Which page did you want to refer to?

18 Q. First of all, I want to turn back to "Beat PM"
19 the "Methodology to derive organizational implications",
20 which is page 12300 at the bottom, I mean at the side of
21 the page under "Texas AG Action".

22 A. Yes.

23 Q. Were you present during this presentation?

24 A. Can I just -- I believe that this is a draft
25 of a presentation which was put together, and I don't think

1 I was present at the final presentation, as this would have
2 been fairly early on in the planning process for Project
3 Battalion in June 1995.

4 Q. Did you see some phase of this presentation?

5 A. I may have done, but I don't have specific
6 recall at this point in time.

7 Q. Do you remember some discussion being made of
8 the need to "Beat PM"?

9 A. Not until the presentation was finally made,
10 as I was not a party to the planning process for Project
11 Battalion.

12 Q. "PM" refers to Philip Morris?

13 A. I believe so. I believe it refers to the
14 Philip Morris group of companies.

15 Q. And was it expressed that Philip Morris
16 operated as a global integrated company?

17 MR CUNHA: Expressed where?

18 MR MCCLAIN: Within these group -- within these
19 meetings that were had on Project Battalion?

20 A. As I explained to you, I was not part of the
21 team which was planning Project Battalion. They are named
22 on the front page of this Exhibit.

23 Q. Did you have it ever expressed, in any
24 meetings you were involved in regarding Project Battalion,
25 that Philip Morris operated internationally as an

1 integrated tobacco company?

2 A. The objective was to beat Philip Morris as a
3 group in terms of market share. The project did not, as
4 far as I am aware, examine the internal workings of the
5 Philip Morris group of companies.

6 Q. Look over at page 12315, BAT R&D center. It
7 says "B&W 143". I mean it lists 1, 2, 3, 4, and BAT R&D
8 centers?

9 A. Yes.

10 Q. And one of those is the B&W facility at Macon
11 in Georgia?

12 A. Correct.

13 Q. "Look at R&D specific opportunities and
14 synergies".

15 A. Yes.

16 Q. "Number 1: More coordinated and focused
17 global thrust versus PM." Correct?

18 A. Yes.

19 Q. "2: Clearer alignment of priorities with
20 overall BAT tobacco competitive/marketing strategy."

21 Have I read that correctly?

22 A. Yes.

23 Q. Then, looking back at "BAT Manufacturing" on
24 page 12324, "Operate 63 plants in over 50 countries"?

25 A. What is your question?

1 Q. That is what it says, "BAT Manufacturing"?

2 A. In the first bullet point it says operate 63
3 plants in over 50 countries, yes.

4 Q. Then over at page 12326, under "Senior
5 Management Interviews". "Project Battalion: There is
6 strong agreement that key manufacturing decisions should be
7 centralized".

8 A. Yes.

9 MR CUNHA: Let me know when a good time to break
10 is.

11 MR MCCLAIN: Okay. Let us do one document then
12 we are about to end this subject area. You mentioned
13 previously that you thought a misstatement was made in one
14 document, I can't remember which one it was, regarding BAT
15 acquiring American, and you said no, that was not correct,
16 it was Brown & Williamson that acquired American. Do you
17 remember that exchange that we had?

18 A. I do.

19 Q. And I asked you at that time did you know of
20 any other documents where B.A.T Industries had made that
21 representation to the public and you said "no". Am I
22 right?

23 MR CUNHA: I don't know that it is fair or
24 proper to ask the witness to recall all the testimony today
25 and to characterize whether that is what the testimony was

1 or was not. If you have a specific piece of testimony --

2 MR MCCLAIN: That is the specific piece.

3 MR CUNHA: I think you can ask him about it and
4 I think, but more to the point it is clear the record is
5 the best evidence of what the record is, so maybe if you
6 have another question you could just ask him the question.

7 MR MCCLAIN: Did you remember making that
8 statement to me, that you did not remember any such
9 document?

10 A. I don't recall such, any document.

11 Q. Let us mark this as Exhibit 18.

12 **(Exhibit 18 marked by the Reporter).** (Pause.)

13 This is B.A.T Industries' quarterly bulletin, is
14 it not?

15 A. It is.

16 Q. Do you see where it says:

17 "B.A.T Industries is to acquire American Tobacco
18 from American Brands for US\$1 billion in cash".

19 A. Yes.

20 Q. No reference to "group". Am I right?

21 A. In that sentence, correct.

22 Q. No reference to B&W acquiring the company at
23 all, am I right?

24 MR CUNHA: I am going to object to the question
25 because of the tense of the question. I think it is

1 potentially misleading.

2 MR MCCLAIN: Tense?

3 MR CUNHA: Yes, the verb tense. This document
4 applies to an event to happen in the future and your
5 sentence implied an event to happen in the past, and if you
6 have seen the affidavits and other information with respect
7 to this acquisition you would see that that is significant
8 in this case.

9 A. Could you repeat the question?

10 MR MCCLAIN: There is no reference to Brown &
11 Williamson, is there?

12 MR CUNHA: Do you want him to look through the
13 whole document?

14 MR MCCLAIN: Just in that reference to the
15 acquisition of American.

16 MR CUNHA: So you just want him to look at the
17 first page of the document?

18 MR MCCLAIN: Yes. Look at the rest of it and
19 see if there is any reference to B&W acquiring American.

20 MR CUNHA: I am going to object to the question
21 again, again because of the verb tense.

22 A. Can I answer?

23 MR CUNHA: Yes.

24 A. There is no reference to Brown & Williamson on
25 that page.

1 MR MCCLAIN: Okay. Let's take a break.

2 (Recessed for lunch at 1.00 pm and recommenced at 1.57).

3 MR MCCLAIN: There is a practice within the BAT
4 Group of delegating authority, is there not?

5 A. That is correct.

6 Q. Can you describe what the practice of
7 delegating authority is as it is known within the BAT
8 Group?

9 A. The Board of B.A.T Industries plc decides on
10 those matters on which it wishes to be consulted. It lays
11 down fairly high thresholds so that only matters of extreme
12 significance from a group perspective reach B.A.T
13 Industries' Board for decision. I should explain that the
14 operating companies within the B.A.T Industries Group,
15 whether they are in the tobacco business or in the
16 financial services business, run their own affairs, but
17 they are required under the system of delegated authorities
18 to refer for consideration such matters as major capital
19 investments, acquisitions, senior staff transfers, matters
20 of that nature.

21 Q. And, as you point out, although the individual
22 companies run their own affairs, that is within the
23 constraints of the direction of the BAT Board. In other
24 words, the BAT Board sets the limits within which they can
25 operate their own affairs, does it not?

1 MR CUNHA: I object to the form of the
2 question.

3 A. B.A.T Industries stipulates those matters on
4 which it wishes to be consulted.

5 MR MCCLAIN: But it is the prerogative of the
6 B.A.T Industries Board to request that it be consulted on
7 all matters if it so desires. Am I correct?

8 MR CUNHA: Objection, calls for hypothetical
9 response.

10 A. It could ask for anything it wishes.

11 MR MCCLAIN: And --

12 MR CUNHA: Let him finish.

13 A. But in practice it does not do so and is only
14 concerned with those matters which the statement of
15 delegated authorities specifies are matters on which the
16 main Board of B.A.T Industries plc should be consulted.

17 MR MCCLAIN: I understand that answer, but in
18 practical effect, you mentioned in practice, and in
19 practical effect, as an example, if Patrick Sheehy were to
20 call Mr Pritchard at B&W and ask him to do something, then
21 that effect would be that Mr Pritchard would do it, would
22 he not?

23 MR CUNHA: Objection. I do not believe the
24 question is answerable as phrased. I think you have to
25 give a specific, and you would be speculating as to what

1 Mr Pritchard would or would not do. I don't think this
2 witness can answer that question.

3 A. Should I answer?

4 MR CUNHA: If you can.

5 A. First of all, I was not the Company Secretary
6 of B.A.T Industries at the time Sir Patrick Sheehy was
7 Chairman, so I don't know what the relationship between him
8 and Mr Pritchard was, but --

9 MR MCCLAIN: Who is the Chairman today?

10 A. The Chairman is Lord Cairns, or the Earl of
11 Cairns to give him his full title.

12 Q. If the Earl called Mr Pritchard and gave him a
13 direction, in practice, regarding the business of the
14 company of the Brown & Williamson company, that he wanted a
15 report to the Board, as an example, within one week, would
16 it be within Mr Pritchard's prerogative to tell him "I am
17 too busy"?

18 MR CUNHA: Same objection.

19 A. If I may answer the question without
20 personalities.

21 MR MCCLAIN: Yes.

22 A. In other words, if the Chairman of B.A.T
23 Industries plc called the Chief Executive of Brown &
24 Williamson, and asked for a report, I would imagine,
25 although I am not concerned with the internal workings of

1 Brown & Williamson, I imagine that the Chief Executive
2 Officer would consult his colleagues on the Board, and if
3 it was a reasonable request he would probably comply.

4 Q. Look at Exhibit 19.

5 (Exhibit 19 marked by the Reporter). (Pause.)

6 Are you familiar with this document, with this
7 type of document?

8 A. If I can make the comment also that Exhibit 19
9 consists of two documents. The last page is a separate
10 document.

11 Q. Okay. Remove that for me, if you would. We
12 will set that one over here too. Are you familiar with
13 this type of document?

14 A. I am.

15 Q. Is this a document which falls into the
16 category of a memorandum of delegated authority?

17 A. Yes.

18 Q. Now, this relates to "Appointments,
19 promotions, transfers, dismissals, redundancies or early
20 retirement of employees and other related matters".

21 A. This relates to employees of the
22 British-American Tobacco (Holdings) group, yes.

23 Q. And Brown & Williamson would be included in
24 that?

25 A. It would.

1 Q. And what is the Chief Executive Committee of
2 B.A.T Industries, the CEC so called?

3 A. That is a Committee of B.A.T Industries plc
4 consisting of three senior executive directors.

5 Q. And in 1996 who were they?

6 A. In 1996 I believe that they were Mr Broughton,
7 Mr Herter, and Mr Allvey.

8 Q. As I understand the function of this CEC, it
9 is a sub-committee of the entire Board which is able to
10 make decisions, without the necessity of consulting the
11 entire Board, on certain matters that had been delegated to
12 them. Is that correct?

13 A. It is a committee of the main Board of B.A.T
14 Industries plc, which has certain specified authorities
15 from that main Board.

16 Q. And this is one such -- this document
17 memorializes one category of the matters that have been
18 assigned to them, is that correct? That is the CEC?

19 A. This document has been prepared by the Human
20 Resources Director of British-American Tobacco (Holdings)
21 Limited, and it does state what matters should be referred
22 to the CEC of B.A.T Industries plc from a human relations
23 point of view.

24 Q. Now, if you look down at 1.9, under "What the
25 CEC will approve", it is "Major changes (having a

1 significant financial impact) in or proposals to develop
2 long-term pension and employee benefit schemes in the UK
3 and the top 10 markets."

4 Then, if you turn over to Exhibit A, United
5 States is the first listed top 10 market. Am I right?

6 A. Correct.

7 Q. So the CEC in this instant would have to
8 approve any major changes in or proposals to develop
9 long-term pensions and employee benefit schemes. Am I
10 right?

11 A. That is correct.

12 Q. In the United States as an example?

13 A. Yes.

14 Q. 1.11: "Succession planning for employees is
15 outlined in Appendix B. The CEC has to approve succession
16 plan proposals for the General Managers of the top 10
17 markets". Is that correct?

18 A. Correct.

19 Q. That would include the United States?

20 A. Correct.

21 Q. Direct reports to general managers at the top
22 of the companies in top 10 markets, correct?

23 A. Direct reports to the General Managers of
24 those companies, correct.

25 Q. So that we are clear, because that term is not

1 one frequently used in America, what is a "report", as you
2 refer to it in this document?

3 MR CUNHA: Object to the form of the question.
4 I don't think the witness testified that he prepared this
5 document.

6 MR MCCLAIN: As it is referred to in this
7 document?

8 A. A direct report is an employee who is
9 answerable to the General Manager in a particular country.

10 Q. So if it is a -- so in terms of General
11 Managers, who would you be referring to, let us say in the
12 American Brown & Williamson?

13 A. The Chief Executive Officer.

14 Q. So his -- the persons that directly report to
15 him?

16 A. Correct.

17 Q. And give me an example of someone that
18 typically would generally report to the Chief Executive
19 Officer of Brown & Williamson?

20 A. The Chief Financial Officer.

21 Q. Okay, and so any changes made to the Chief
22 Executive Officer or the Chief Financial Officer would have
23 to be approved by the CEC of B.A.T Industries plc.
24 Correct?

25 MR CUNHA: Objection, that is not what the

1 document says.

2 A. The succession planned in relation to those
3 individuals would have to be approved.

4 MR MCCLAIN: What is the succession plan?

5 A. A succession plan is a document in which the
6 most senior positions within the group, B.A.T Industries
7 Group of companies, is set out and in which, should the
8 current incumbent leave for any reason, there would be an
9 identified successor within the group.

10 Q. All right, and so that today if you wanted to
11 find out who would replace Mr Pritchard in the event of his
12 departure, we could find that out; is that correct?

13 A. Well, Mr Pritchard has already retired.

14 Q. Okay.

15 A. But you could find out who was expected to,
16 who would in the normal course of events be expected to
17 succeed the current Chief Executive Officer of Brown &
18 Williamson.

19 Q. And that person, that succession plan has been
20 approved by the CEC, am I correct?

21 A. You are correct.

22 Q. All right. Now, likewise this indicates that
23 at Brown & Williamson a succession plan must be approved
24 for the Executive VP and the CFO. Am I right?

25 A. That is correct.

1 Q. The Senior VP of Operations?
2 A. Yes.
3 Q. The Senior VP Marketing and Sales?
4 A. Yes.
5 Q. Senior VP Legal, CORA/HR?
6 A. Yes.
7 Q. What is that, CORA/HR?
8 A. That is the Senior Vice President Legal,
9 Consumer and Regulatory Affairs and Human Resources. It is
10 a single post.
11 Q. Okay. Likewise in 1.12:
12 "Appointments, promotions, transfers, dismissals,
13 redundancies or early retirements of GMs of Top Ten Markets
14 (Appendix A) and senior management positions", as they are
15 defined in Appendices A and B(d)." Correct?
16 A. They are subject to approval by the CEC.
17 Q. And: "Merit performance and bonus ratings
18 (other than those prefixed by C for all staff in Appendix A
19 and Appendix B(d)".
20 A. Sorry? Which number?
21 Q. 1.13, Appendix B(d)?
22 A. Yes, they would also be subject to approval by
23 the CEC, but I should point out that they are also
24 required, approval is also required by the Board of
25 British-American Tobacco (Holdings) to all those matters

1 that are listed under section one of that document.

2 Q. Speaking of which, British Tobacco Holdings
3 has management responsibility for the entire tobacco group,
4 does it not?

5 A. It is an investment holding company.

6 Q. And its responsibility is to manage the
7 tobacco Holdings of British-American Tobacco, I am sorry,
8 of B.A.T Industries plc?

9 MR CUNHA: Object to the form of the question.
10 You can answer.

11 A. British-American Tobacco (Holdings) is an
12 investment holding company which monitors the performance
13 of the companies of which it holds the shareholdings. The
14 day-to-day management of the various companies is in the
15 hands of the individual Boards of Directors of those
16 companies.

17 MR MCCLAIN: Have you ever seen documents which
18 describe the function of British-American Holdings as
19 having the responsibility of managing the tobacco portfolio
20 of British B.A.T Industries plc?

21 A. I cannot say whether I have seen documents as
22 such, but I would reiterate that the management of those
23 companies rests with the Boards of those companies.

24 Q. Within the context of Project Battalion, was
25 not British-American Tobacco Holdings, or "BAT(H)" as it is

1 referred to, assigned the task to manage B.A.T Industries
2 plc's tobacco interests?

3 A. No.

4 Q. Going back to this document, going back to
5 this document at 3.2, the CEC also has to have, has the
6 responsibility -- strike that. Looking at 3.2:

7 The CEC must be consulted before there is a
8 "salary revision or regrading of staff in Appendix B, plus
9 appointments of other staff in B&W, grade 11 and above".

10 Am I correct?

11 A. No, you are not correct.

12 Q. What was incorrect about my statement?

13 A. That these are matters which are for reference
14 to the Managing Director for decision by the Human
15 Resources Director and the relevant Regional and/or
16 Functional Director of British-American Tobacco Holdings.

17 Q. I am sorry, that is what the heading Marked
18 "3" indicates. Am I correct?

19 A. Yes.

20 Q. So who specifically would have responsibility
21 for salary revisions of persons in Appendix B and B&W grade
22 11 and above? What title does that person have and what
23 company is he or she with?

24 MR CUNHA: Object to the form of the question
25 because it includes an incorrect factual predicate.

1 MR MCCLAIN: What is the incorrect factual
2 predicate?

3 MR CUNHA: That there is one company that has
4 decision making power in that regard for all staff. The
5 document indicates, I believe -- I mean the witness should
6 answer the question, but let the witness answer the
7 question, but maybe you should rephrase the question,
8 because I think your phrasing is just wrong.

9 MR MCCLAIN: What does "3" mean?

10 A. "3" means that the items mentioned in 3.1 and
11 3.2 have to be referred to the Managing Director Tobacco
12 and the Human Resources Director of British-American
13 Tobacco Holdings, and the relevant Regional and/or
14 Functional Director of British-American Tobacco Holdings.
15 So that, for example, an employee on grade 38 at
16 British-American Tobacco Company Limited, if his salary was
17 to be revised, it would have to be approved by those
18 gentlemen.

19 Q. And if someone grade 12 at B&W, if it was
20 proposed to revise his salary, those same gentlemen would
21 have to pass on it. Is that correct?

22 MR CUNHA: I am going to object to the form of
23 the question. If by "gentlemen" you mean to refer to actual
24 people rather than positions --

25 MR MCCLAIN: Those positions would have to pass

1 on it. Am I correct?

2 A. That is correct.

3 Q. As I understand it, those persons would be the
4 Managing Director of Tobacco and the Human Resources
5 Director of British-American Tobacco Holdings and the
6 relevant Regional and/or Functional Director of
7 British-American Tobacco Holdings. Am I correct?

8 A. You are correct, but I just add that the
9 grades which are specified there are all the most senior
10 people in those companies.

11 Q. But nonetheless it is not within the authority
12 of the Brown & Williamson Board, as an example, to
13 unilaterally change the pay structure of persons grade 11
14 and above at B&W. Am I correct?

15 A. Without reference to those people mentioned,
16 yes.

17 Q. Let us go to Exhibit 20.

18 (Exhibit 20 marked by the Reporter).

19 This is another delegated authority memorandum of
20 B.A.T Industries, am I correct?

21 A. You are. It appears to be an incomplete
22 document. It is headed "Appendix 1" and there is an
23 appendix 2, so I don't know what the covering document
24 looked like.

25 Q. Nor do I. But nonetheless this indicates that

1 at the B.A.T Industries there are guidelines to the tobacco
2 business which are referred to the CEC. Am I correct?

3 A. You are right.

4 Q. And Brown & Williamson, as an example, must
5 adhere to those guidelines in conducting its tobacco
6 business. Am I correct?

7 A. No, they are guidelines, not instructions.

8 Q. If they want to vary from the guidelines what
9 must they do?

10 A. They must run their businesses in the manner
11 they think fit. The guidelines are what B.A.T Industries
12 expects to see in terms of results from the tobacco
13 business.

14 Q. In terms of performance?

15 A. In terms of financial performance.

16 Q. I see. We are going to see a document then
17 that might clarify that. Let us look at Exhibit 21.

18 (Exhibit 21 marked by the Reporter.) (Pause.)

19 Here in the second subject, "Finance", there is a
20 reference here to setting a limit of 10 million dollars for
21 Brown & Williamson for raising debt finance and capital
22 expenditure/disposal of assets. Am I correct?

23 A. Where are you reading from?

24 Q. Under A: "10 million, Brown & Williamson
25 operating group"?

1 A. Where is the reference to disposal of assets.

2 Yes, I see.

3 Q. What is this delegated authority memorandum
4 telling Brown & Williamson about what it can and cannot do?

5 A. It is telling Brown & Williamson that
6 expenditure on capital items or the incurring of debt or
7 the disposal of assets valued at or below 10 million
8 dollars can -- do not need to be referred up the chain, if
9 I can call it that.

10 Q. But anything above does need to be referred up
11 the chain; am I right?

12 A. That is correct.

13 Q. Who is the operating group referring to here?

14 A. At the date of this memorandum, 26th July
15 1994, it is Brown & Williamson.

16 Q. So it is telling Brown & Williamson it has to
17 consult with itself on expenditures of over 10 million?

18 A. No, I said expenditures over 10 million need
19 to be referred up the chain.

20 Q. Who would be up the chain in 1994?

21 A. The CEC and then B.A.T Industries plc.

22 Q. Okay.

23 A. This document is pre the Project Battalion.

24 Q. Today what would the reporting be, assuming
25 that the limits are still the same?

1 MR CUNHA: I am going to object to the
2 assumption, although I don't know whether or not it is
3 correct, but subject to that the witness can answer the
4 question.

5 A. I would need to check the exact financial
6 limits but, if you like, the operating group is now
7 British-American Tobacco (Holdings).

8 MR MCCLAIN: So that is where the reference
9 would be "to approve expenditures or" --

10 A. Yes, up to --

11 Q. "Disposal of assets, beyond whatever the limit
12 currently is". BAT(H) would have to approve that?

13 A. That is correct, but I believe the limit is
14 higher.

15 Q. Has B.A.T Industries plc ever guaranteed the
16 debt of Brown & Williamson Corporation to your knowledge?

17 A. No, not to my knowledge.

18 Q. Are you aware of an arrangement whereby Brown
19 & Williamson financed its receivables with a company called
20 Corporate Asset Funding Company Inc, CAFCo, and Citicorp,
21 North America C&A?

22 A. No.

23 Q. So if a transaction occurred whereby BAT plc
24 guaranteed a transaction whereby those two entities that I
25 mentioned, Corporate Asset Funding Company and Citicorp,

1 financed Brown & Williamson's receivables, you don't know
2 anything about that?

3 MR CUNHA: Do you mean B.A.T Industries plc?

4 MR MCCLAIN: Yes.

5 A. I am not aware of it.

6 Q. There are certainly guidelines that have been
7 established for BAT in running its business, am I correct?

8 A. What do you mean by "BAT"?

9 Q. B.A.T Industries plc.

10 MR CUNHA: Object to the form of the question.
11 The witness is struggling. I think he has my question. We
12 don't understand what you are asking.

13 MR MCCLAIN: Let me mark this as Exhibit 22.

14 **(Exhibit 22 marked by the Reporter).**

15 Are these the guidelines that you referred to
16 previously?

17 A. This document appears to be guidelines drawn
18 up in 1992 by B.A.T Industries for Brown & Williamson
19 which, as I have mentioned earlier, was at that stage what
20 was known as an operating group within the B.A.T Industries
21 Group of companies.

22 Q. And in this instance B.A.T Industries is
23 providing guidance to Brown & Williamson as to what it
24 expects its performance to be for the coming year; am I
25 right?

1 A. Yes.

2 Q. It says that Brown and Williamson is
3 responsible for "(a): The management and development of
4 the group's tobacco interests in the USA." Is that correct?

5 A. That is what the document states.

6 Q. And is that the common understanding within
7 BAT plc or at least as of this time?

8 MR CUNHA: You mean B.A.T Industries plc?

9 MR MCCLAIN: Yes.

10 A. Brown & Williamson manages its own business in
11 the United States.

12 Q. So when this says that, when these guidelines
13 were distributed, which state that Brown & Williamson is
14 responsible for the management and development of the
15 Group's tobacco interests in the USA, that was an incorrect
16 statement; is that your testimony?

17 MR CUNHA: Object to the form of the question.
18 It just completely mischaracterizes the testimony. You may
19 answer.

20 A. B.A.T Industries, through a number of
21 intermediate holding companies, owned the 100 per cent of
22 the shareholding of Brown & Williamson Tobacco Corporation
23 in the United States, and it is that business to which the
24 document refers.

25 MR MCCLAIN: And so that business is in

1 beneficial -- strike that. That business is beneficially
2 owned by B.A.T Industries plc; am I correct?

3 A. Via a number of intermediate holding
4 companies, yes.

5 Q. And so when B.A.T Industries plc refers to it
6 as its own interests in the US, it is correct in doing so,
7 is it not?

8 MR CUNHA: I am going to object to the form of
9 the question. You can answer.

10 A. If you wish to characterize it that way.

11 MR MCCLAIN: Don't you?

12 A. I characterize it as Brown & Williamson's
13 business.

14 Q. Well, the documents of the industries plc, if
15 we can refer to the parent company as that, refer to it as
16 their own interests repeatedly, don't they. We have seen
17 that today?

18 A. It is shorthand, if I can put it that way --

19 MR MCCLAIN: Shorthand or not.

20 MR CUNHA: Let him finish his answer.

21 MR MCCLAIN: Okay.

22 A. It is a shorthand reference. The author of
23 this particular document would not wish to recite on each
24 occasion the chain of ownership between B.A.T Industries
25 plc and Brown & Williamson.

1 Q. Who is the author of this document with the
2 initials HCB?

3 A. I anticipate that it is Miss Hilary Barton.

4 Q. What is her position?

5 A. I am not sure what her title was in 1992, but
6 she is, I believe, the Strategy Planning Manager for B.A.T
7 Industries plc.

8 Q. Number 2 says "Brown & Williamson will work on
9 projects as required by the Tobacco Strategy Group and it
10 will also assist the new business development team of B.A.T
11 Industries in that body's valuation of proposals to invest
12 in new markets and to make acquisitions or disposals", does
13 it not?

14 A. Yes, it does.

15 Q. And this was the expectation of B.A.T
16 Industries plc of Brown & Williamson, as I understand your
17 testimony?

18 A. Correct.

19 Q. And it said that "Brown & Williamson is
20 expected to participate in the process of developing best
21 international practice in respect of its environmental
22 policies", as number 3, does it not, on this document?

23 A. It does, but it goes on to say that there
24 should be specific plans to ensure compliance with these
25 policies.

1 Q. And then there is a series of financial
2 guidelines that are laid out?

3 A. Correct.

4 Q. And the "specific priorities" on page 2?

5 A. Correct.

6 Q. With an objective to increase market share?

7 A. Yes.

8 Q. "To maximize the profitability of Kool
9 cigarettes"?

10 A. Correct.

11 Q. "To maintain the share of full revenue segment
12 of the market"?

13 A. Correct.

14 Q. And several other matters that are laid out
15 here on page 2, correct?

16 A. Correct.

17 Q. And those are all expectations that B.A.T
18 Industries plc was passing on to Brown & Williamson, which
19 it owned beneficially 100 per cent of, for the year 1992,
20 as its expectation of how the company should perform?

21 A. Yes, subject to my qualification that the
22 investment was held through various intermediate holding
23 companies.

24 Q. All right, let us take a break for a minute.

25 (A short break.)

1 (Exhibit 23 marked by the Reporter).

2 Q. We have marked as Exhibit 23 the guidelines
3 for Brown & Williamson in 1993. They differ somewhat from
4 the guidelines they were given in 1992, do they not?

5 A. Yes, they certainly do differ.

6 Q. The first priority they are given is -- the
7 first priority for Brown & Williamson is "to assist B.A.T
8 Industries in its objective to be the premiere tobacco
9 company"?

10 A. That is what it says.

11 Q. Did you review this document before making
12 your affidavit?

13 A. No.

14 Q. Number 2 priority: "B&W will contribute to
15 the development of market strategies to establish BAT as a
16 leading player in markets where it does not already have
17 that status." Do you see that?

18 A. I do.

19 Q. Number 3: "Brown & Williamson is responsible
20 for the management and development of the Group's tobacco
21 interest in the USA". Same statement that was made in 92?

22 A. Yes.

23 Q. And B, for "Controlling the integrity and
24 promoting sales of US international brands worldwide
25 through exports contracts, manufacture and licences".

1 A. That is what it says. There was a difference
2 between 1992 and 1993, in that in 1992 the words "within
3 and outside the group" are added, and they are missing from
4 the 1993 version.

5 Q. It has some further guidelines for Brown &
6 Williamson but 6 says:

7 "Brown & Williamson will assist the new business
8 development team of B.A.T Industries in prospecting and
9 developing business plans for investment in new markets and
10 in subsequently managing those investments and markets for
11 which it is responsible."

12 Do you see that under number 6?

13 A. Yes.

14 Q. When a document that is entitled a "guideline"
15 says to a subsidiary company that "You will assist the new
16 development, business development team of B.A.T
17 Industries", is that optional for BAT -- for Brown &
18 Williamson?

19 A. Yes.

20 Q. Have you ever known Brown & Williamson to
21 choose not to follow the direction of B.A.T Industries when
22 given a direction such as "Brown & Williamson will assist
23 the new development team of B.A.T Industries"?

24 A. Can I first of all repeat that these are not
25 directions, they are guidelines. But, secondly, I would

1 not have been a party to these guidelines, so I cannot
2 answer your question in terms of factual accuracy.

3 Q. So you have no knowledge?

4 A. Correct.

5 Q. It has some other general priorities, but
6 under "financial guidelines" what is "trading profit"?

7 A. Trading profit is profit before taxation.

8 Q. And here BAT gives direction to or gives
9 guideline to Brown & Williamson of what their profit should
10 be; is that correct?

11 A. What it expects their trading profit to be.

12 Q. As a practical matter, Brown & Williamson is
13 responsible to pay dividends, through the chain of
14 ownership up to B.A.T Industries plc, is it not?

15 A. Its responsibility is to pay dividends to its
16 shareholding parents.

17 Q. And that shareholding parent in turn pays up
18 the chain, ultimately ending up at Industries plc, am I
19 correct?

20 A. The Board of the individual holding company
21 will decide what dividends that company can pay up the
22 chain.

23 Q. But ultimately the goal is to pay B.A.T
24 Industries plc a dividend for its investment, am I right?

25 A. If I can put it that B.A.T Industries expects

1 to see dividends, to receive dividends, yes.

2 Q. Then, under the category of "Specific
3 Priorities", it lays out for B&W specific priorities for
4 the US domestic market, Kool cigarettes, other full-revenue
5 brands, excise changes, international sales, brand
6 valuation, quality, overhead cost structure, anticipatory
7 buying and returns from the trade, as well as expectations
8 in regard to leaf exports. Am I correct?

9 A. Yes.

10 Q. All those things are guidelines that have been
11 laid out for Brown & Williamson by B.A.T Industries,
12 correct?

13 A. Correct.

14 Q. Can we mark this as Exhibit 24.

15 **(Exhibit 24 marked by the Reporter).**

16 This is another 1993 document which indicates it
17 is a draft. This indicates it is a draft financial
18 guidelines. I don't know how it relates to the last
19 document.

20 A. The first page appears to be reproduced in
21 paragraphs 12 to 16 of Exhibit 23. I am not sure whether it
22 is word for word the same.

23 Q. It has: "Trading profit in 1994 should recover
24 to the load adjusted 1992 levels of 861 million", which I
25 do not find reflected in the numbers in Exhibit 23.

1 A. As you yourself pointed out, Exhibit 24 is
2 only a draft which predates Exhibit 23.

3 Q. So do you think this was a preparatory
4 document to this final document being prepared, if you were
5 to guess?

6 A. That would be my guess.

7 Q. Okay. Let us not fool with it then. Okay.
8 Let us mark the next Exhibit.

9 **(Exhibit 25 marked by the Reporter.)**

10 I am handing you what has been marked as Exhibit
11 25, B.A.T Industries plc's statement of business conduct.
12 (Pause.) Is your document missing a page 4846?

13 A. Yes, it is.

14 Q. So is mine. I don't know whether this is the
15 way it was produced to us or whether or not this is a
16 copying problem relating to my office, but we will have to
17 get that page.

18 MR CUNHA: The Bates numbers indicate that there
19 was a page produced between pages 45 and 47.

20 MR MCCLAIN: That is how I recognized it, but I
21 don't know whether we got it in this form.

22 MR CUNHA: But there is another Bates number
23 also, if you look at the other Bates number in the margin,
24 202207920, then it goes to 22, indicating a 921 was
25 produced.

1 MR MCCLAIN: At some point, that is right. I
2 don't know where. I don't know whether we got it. I have
3 no idea.

4 MR CUNHA: If you don't have it obviously, for
5 whatever reason, we would be happy to supply it.

6 MR MCCLAIN: I would like to have it.
7 Nonetheless, it is not necessary for my questions here.
8 This is B.A.T Industries plc's statement of business
9 conduct. Was this a guideline or was it mandatory for
10 members of the B.A.T Industries Group?

11 A. This is the policy developed by the main Board
12 of B.A.T Industries plc.

13 Q. How does it differ from a guideline?

14 A. This is a policy it expected to be
15 incorporated in standards of business conduct adopted by
16 each of its operating subsidiaries.

17 Q. So this is up a level in terms of its binding
18 effect upon the operating subsidiaries?

19 MR CUNHA: Object to the form of the question.
20 I think it mischaracterizes the testimony.

21 A. Can I say that B.A.T Industries would have
22 expected the first five pages of this document to be
23 reflected in any policy document produced by an operating
24 subsidiary. The remainder of the document is, as you will
25 see, headed as a guideline, so it has a greater force than

1 the back of the document.

2 MR MCCLAIN: At page 4847, it states in the
3 middle of that paragraph that -- we are missing the
4 previous page but it says, "The Group's researched and
5 considered position is that..."

6 A. Where are you?

7 Q. At the top.

8 A. 4847.

9 Q. Yes.

10 A. I am with you.

11 Q. "The Group's researched and considered position
12 is that (1) causation between smoking and alleged smoking
13 related diseases has generally not been proved and that (2)
14 it does not itself make health claims for tobacco
15 products. Consequently, group companies cannot participate
16 in any campaigns stressing the benefits of moderate levels
17 of cigarette consumption of cigarettes with low tar and/or
18 nicotine deliveries or any other known or claimed positive
19 aspects of smoking, except those concerned with the
20 dissemination of objective information and the right of
21 adult individuals to choose whether or not they smoke."

22 Did I read that accurately?

23 A. You did.

24 MR CUNHA: Let me just say at this point that
25 this, what you read is a fragment of a sentence, a carry

1 over from the prior page, which you have indicated is
2 missing from the document.

3 MR MCCLAIN: I will be happy to wait while you
4 have it faxed.

5 MR CUNHA: I didn't put the exhibits together,
6 sir. You and your office did. I am not taking the
7 examination. I am just noting this for the record. I
8 believe there is information on that page which puts in
9 further context the discussion of this page, and so I am
10 going to object.

11 MR MCCLAIN: What do you believe it says put in
12 context, so you can clear up the objection.

13 MR CUNHA: I do not have the page in front of me
14 but it is clear. You have read a sentence fragment so to
15 that extent there is no question that there is information
16 on the other page that puts it in context.

17 MR MCCLAIN: I pointed it out to you, as I said,
18 three times.

19 MR CUNHA: I am going to allow you to ask the
20 witness questions. I will allow the witness to answer it.
21 I want the record to reflect the situation with respect to
22 the document and state that I have an objection to
23 questioning with respect to an incomplete document.

24 MR MCCLAIN: Have you heard this or seen this
25 guideline expressed throughout the BAT Group before?

1 A. I am familiar with this document.

2 Q. Are you familiar with this general statement
3 about smoking and health and the position the group takes
4 on that subject?

5 A. Yes.

6 Q. And is this consistent with what you
7 understand the position of the group to be?

8 A. I believe that this statement represents what
9 the Group's understanding was, based on scientific evidence
10 at the time the document was produced.

11 Q. Is this the Group's current understanding as
12 you know it, or has it changed?

13 A. First of all, the Group's position depends
14 upon the work of the scientists in the various operating
15 companies. B.A.T Industries plc does not research these
16 matters. But it is aware that British-American Tobacco
17 (Holdings) has developed a position, positions on various
18 aspects of the smoking and health debate, based on the work
19 of its scientists and based on the work of external
20 consultants.

21 Q. Does British-American Tobacco (Holdings) have
22 a body of research that it possesses on this subject?

23 A. The scientists to whom I have referred are
24 part of -- are employed by various subsidiaries of
25 British-American Tobacco (Holdings), and the position

1 British-American Tobacco (Holdings) takes is based upon the
2 work of those scientists.

3 Q. And is the statement contained here on this
4 page consistent with the current position of BAT(H) and
5 therefore B.A.T Industries?

6 A. The statement is short and I believe that
7 British-American Tobacco (Holdings) has positions on
8 various aspects of the debate, so that the position is very
9 difficult to compress into two sentences.

10 Q. Why don't you describe it as best you know it,
11 and take as many sentences as you would like.

12 A. Well, I am not a scientist and I would only be
13 repeating an understanding which was possibly wrong.

14 Q. I understand that, but you are the witness I
15 have today, and with that caveat give me your
16 understanding.

17 MR CUNHA: I am going to object to the question
18 on a number of grounds. First, I think you would agree I
19 have given you a great deal of latitude today, Ken, given
20 that the Court's direction was to examine the witness with
21 respect to jurisdictional contacts with the State of
22 Missouri. I don't think we are in an area now that has
23 anything to do with jurisdictional contacts with the State
24 of Missouri. I think you are square on the issue of
25 questioning with respect to the merits of the dispute,

1 which was not to be what the subject of this examination
2 was. That is number 1.

3 Number 2; given the witness's testimony that,
4 number 1, the position paper that he is referring to was a
5 paper of British-American Tobacco (Holdings), not
6 British-American Tobacco Industries, second, that he
7 himself is not a scientist, and, third, that that position
8 he is referring to elaborates to some degree -- he does not
9 feel that he can do it justice in his answer, I don't think
10 it is a fair question.

11 Now, the policies exist, the papers exist, I
12 assume, and the papers themselves I believe are the best
13 evidence of their terms.

14 MR MCCLAIN: I do not disagree that this is a
15 deposition regarding jurisdiction. I disagree regarding
16 your statements that this is not relevant to jurisdiction
17 and so I would like the witness's recollection of what this
18 position paper is regarding guidelines for how members of
19 the B.A.T Industries Group were to conduct themselves in
20 regard to the question of smoking and health, if he has a
21 recollection about it. I will ask the witness tomorrow
22 regarding his recollection about it unless you direct him
23 not to do that.

24 MR CUNHA: No, I am not going to direct the
25 witness not to answer, but you have my objections. I don't

1 think that the question is proper under the circumstances
2 and certainly we maintain our objection that any answer the
3 witness may give should not ever again see the light of
4 day.

5 MR MCCLAIN: I appreciate your courtesy.

6 A. My understanding, and I say this as a
7 non-expert, is that the Group acknowledges that smoking may
8 be a risk factor in the causation of certain diseases.

9 Q. And what diseases are those that you believe
10 the document takes the position that smoking is a risk
11 factor for?

12 A. I said may be a risk factor, not is a risk
13 factor.

14 Q. May be?

15 A. I believe that to be lung cancer, heart
16 disease and emphysema, but there may be others which I am
17 not qualified to answer.

18 Q. Mr Cunha, could I ask you if it is possible
19 tomorrow to provide me with a copy of that position paper
20 of BAT(H) since I am taking that deposition and I do not
21 believe that, whether it is through our own ineptitude or
22 perhaps we just have not been provided it yet, I am unaware
23 of.

24 MR CUNHA: I am going to take your request under
25 advisement. I believe that the statements that you are

1 referring to were developed after the date of the
2 commencement of this litigation, so in that respect as well
3 as others that I have just mentioned I don't think they are
4 relevant as a legal matter to the issue that is before the
5 Court. That said, let me take your request under
6 advisement and get back to you on it.

7 MR MCCLAIN: Thanks. All right, there is also a
8 statement in this document regarding tobacco advertising
9 and marketing. Do you know whether the position of B.A.T
10 Industries has changed since this was issued?

11 A. This is again a matter for British-American
12 Tobacco (Holdings), but, subject to that, I think that the
13 contents of the paragraph are similar to the principles
14 which British-American Tobacco (Holdings) now adheres to,
15 and when I say British-American Tobacco (Holdings) I mean
16 the operating subsidiaries of British-American Tobacco
17 (Holdings).

18 Q. Let me hand you a document which we will mark
19 as Exhibit 26.

20 **(Exhibit 26 marked by the Reporter).**

21 Exhibit 26 is a document dated 1984, which
22 appears to be the policy statement as of 1984 of the B.A.T
23 Industries Group in relation to smoking and health. Did
24 you see a policy like this when you became the Corporate
25 Secretary of BAT Company Limited in 1991?

1 A. I saw it subsequently to joining, yes.

2 Q. And this was the statement at about the time
3 that you joined BAT Company Limited in 1991 on smoking and
4 health?

5 A. I believe so, but I cannot be certain whether
6 that was, whether it was a document dated March 1984 that I
7 was shown.

8 Q. This statement here is:

9 "No conclusive scientific evidence has been
10 advanced and the statistical association does not amount to
11 proof of cause and effect. Thus a genuine scientific
12 controversy exists.

13 "The group's position is that causation has not
14 been proved and that we do not ourselves make health claims
15 for tobacco products."

16 Did I read that correctly?

17 A. Yes.

18 Q. Was that position expected to be adhered to
19 throughout the BAT Group, B.A.T Industries Group?

20 A. This was a statement adopted by B.A.T
21 Industries plc. It would be, I imagine -- I was not in the
22 group in 1984, but I imagine that each of the Boards of the
23 relevant subsidiaries would be asked to consider it and
24 satisfy themselves that in their market this was correct,
25 based on the scientific evidence that they had available to

1 them.

2 Q. This is a policy, is it not? It is not a
3 guideline?

4 A. It states that it is a policy, yes, of the
5 B.A.T Industries Group.

6 Q. And so it would be binding upon the
7 subsidiaries to follow the policy, am I correct?

8 MR CUNHA: Object to the form of the question.

9 A. Subsidiaries would be expected to follow the
10 policy.

11 MR MCCLAIN: What was the Tobacco Strategy
12 Review Team?

13 A. My knowledge of the Tobacco Strategy Review
14 Team is second-hand, because I was not in B.A.T Industries
15 at the time it existed, but my understanding is that it was
16 a forum in which the senior managers of each of the
17 tobacco, the main tobacco operating companies met to
18 discuss matters of common interest.

19 Q. Do you know what Project Airbus was?

20 A. No.

21 Q. Do you know what Project Green Dot was?

22 A. No.

23 Q. Do you know what Y-1 tobacco is?

24 A. In general terms?

25 Q. What do you understand Y-1 tobacco to be?

1 A. I understand it to be a strain of the tobacco
2 leaf.

3 Q. And does it purportedly have a higher content
4 of nicotine than other varieties of tobacco?

5 A. I am not an agronomist, so I can't say.

6 Q. Is that your understanding of what Y-1 tobacco
7 is?

8 A. All I know is that it is a strain of tobacco
9 leaf.

10 Q. You have no understanding of what its
11 properties are or characteristics are, is that correct?

12 A. That is correct.

13 Q. Have you ever reviewed Tobacco Strategy Review
14 Team minutes?

15 A. No.

16 Q. Do you know about the program to introduce
17 ammonia treatment to tobacco products sold throughout the
18 B.A.T Industries Group?

19 A. No.

20 Q. Do you know if there was ever such a program
21 to attempt to utilize ammonia in BAT Group cigarette
22 products?

23 A. Could you repeat the question please?

24 Q. Sure. Do you know if there was ever such a
25 program to attempt to utilize ammonia in BAT Group

1 cigarette products?

2 A. I have no personal knowledge, though I have
3 heard reports of discussions on ammonia.

4 Q. What do you understand the usefulness of
5 ammonia to have been to the companies?

6 A. I don't know.

7 Q. Do you have an understanding that it increases
8 the nicotine yield of cigarettes when they are treated with
9 ammonia?

10 A. I believe I have been told that.

11 Q. Are you aware that it has been alleged that
12 BAT had a program worldwide to utilize ammonia treatments
13 to increase the nicotine yield of its cigarette products?

14 A. I was not aware of that.

15 Q. Do you know whether or not it was the
16 direction of B.A.T Industries plc to Brown & Williamson to
17 utilize ammonia in its products to increase the nicotine
18 yield of its American cigarette products?

19 A. As I have said, I am not aware of any such
20 program.

21 Q. Do you know whether or not it was or has it
22 ever been discussed in your presence, the use of Y-1
23 tobaccos was encouraged by B.A.T Industries to member or to
24 subsidiary companies -- let's start again.

25 Has it ever been -- has the subject of the use of

1 Y-1 tobaccos by BAT Group -- already bad again. One more
2 time.

3 Have you ever been party to a discussion or
4 overheard a discussion about Y-1 tobacco and its use in the
5 United States?

6 A. Yes.

7 Q. Can you tell me not word for word but the
8 substance of that discussion?

9 MR CUNHA: I have no idea what your testimony is
10 going to be, but if it involved a discussion with counsel
11 in connection with the litigation then you should not
12 disclose the substance, since it would be a privileged
13 communication.

14 A. I believe that the subject has been mentioned
15 at a meeting of the Board of Directors of British-American
16 Tobacco (Holdings).

17 MR MCCLAIN: What was discussed, if you can
18 recall?

19 A. I can't recall the details of the discussion.

20 Q. Can you recall anything about the substance of
21 the discussion?

22 A. I believe the subject was discussed when it
23 first became the subject of allegations in tobacco
24 litigation, two or three years ago.

25 Q. What did you understand the allegations to be?

1 A. I cannot say.

2 Q. What was the response of the Board to those
3 questions that were raised?

4 MR CUNHA: Well, I am going to object to the
5 form of the question. It assumes that the Board made a
6 response to allegations regarding Y-1 and litigation, and I
7 don't think that fact has been established.

8 MR MCCLAIN: If you recall, and assuming of
9 course they made some kind of statement?

10 A. All I can recall is that in the course of a
11 normal review of the business the Board had reported to it
12 that allegations had been raised about the use of Y-1
13 tobacco in cases in the United States.

14 Q. Did the Board make any enquiry about that
15 subject, to inform itself whether or not the allegations
16 were true?

17 A. It is not within my personal knowledge.

18 Q. Well -- go ahead.

19 A. But I imagine that the directors responsible
20 would have investigated the matter, yes.

21 Q. Did you ever hear from anyone within the
22 company about the results of any such investigation?

23 A. No.

24 Q. Did you ever form an opinion as to whether or
25 not the use of Y-1 tobacco was encouraged throughout the

1 B.A.T Industries Group of companies?

2 A. I formed no such opinion.

3 Q. What role has B.A.T Industries taken in regard
4 to research in regard to smoking and health?

5 A. B.A.T Industries does not itself research such
6 matters.

7 Q. That is currently?

8 A. That is currently and, as far as I am aware,
9 in the past.

10 Q. You mentioned previously that there were some
11 position papers that you believed to be in the possession
12 of BAT(H) regarding such work that was done on its behalf.
13 Is that correct?

14 A. That is correct.

15 Q. Do you know what research BAT(H) has through
16 the years sponsored regarding the issues of smoking and
17 health?

18 A. BAT Holdings again has not conducted any
19 research but has relied upon the research carried out by
20 various of its subsidiaries into these matters.

21 Q. Which subsidiaries are you aware of that have
22 done smoking and health related research?

23 A. British-American Tobacco Company Limited,
24 Brown & Williamson, Souza Cruz and British-American Tobacco
25 (Germany).

1 Q. Is there a source of collective documents
2 within BAT(H) for the work that has been done by those
3 companies?

4 A. I believe that the best collection is probably
5 the documents that have been turned over in the US
6 litigation.

7 Q. So you believe that their best collection
8 would be in Minnesota somewhere or Texas or some place?

9 A. May well be.

10 Q. But you know of no -- you have not been
11 informed about a repository here being maintained of those
12 documents?

13 A. There is a repository here, or maintained in a
14 town called Guildford here, which houses a Minnesota
15 production.

16 Q. Is there a collection of documents maintained
17 within BAT(H) or somewhere else of those Guildford
18 documents which are separately segregated?

19 A. You are talking about the research documents?

20 Q. Yes.

21 A. Each of the operating companies maintains its
22 own collection of research reports, I believe. I am not
23 aware of any collection of a combination of all those
24 reports, other than those that have been put together for
25 the purposes of this and similar litigation.

1 Q. Let us mark Exhibit 27.

2 (Exhibit 27 marked by the Reporter.)

3 MR CUNHA: Can we take a minute.

4 (A short break.)

5 MR CUNHA: Back on the record, the document you
6 have marked as Clarke Exhibit 27 is a privileged, stolen
7 document. I understand it is a B&W document and we object
8 to its use in examination.

9 MR MCCLAIN: All right. Mr Clarke, have you
10 ever had reports that B&W requested not to receive research
11 reports generated by B&W, by BAT Group companies.

12 MR CUNHA: Why don't you just answer the
13 questions without reference to the document, because I
14 think that is the intent of the question, is it not, sir?

15 MR MCCLAIN: Yes.

16 A. Could you repeat the question?

17 Q. The document -- Mr Clarke, have you ever had
18 reports that B&W requested not to receive research reports
19 generated by BAT Group companies?

20 A. I have not received such reports.

21 Q. Is today the first time that that subject has
22 come to your attention?

23 A. I have heard reference to that subject in the
24 past.

25 Q. In what context have you heard reference to

1 it?

2 MR CUNHA: Again, I will ask you to exclude any
3 communications you may have had with counsel in connection
4 with the litigation or requests for legal advice.

5 A. The reports I have had have been in
6 discussions with counsel.

7 MR MCCLAIN: Outside of discussions with counsel
8 have you had any reports or seen any documents regarding
9 that subject?

10 A. No.

11 (Discussion off the record.)

12 MR CUNHA: In our view this document should be
13 maintained under seal. It is probably an excess of
14 caution. I understand your comment that this document is
15 on the Internet. I believe it is on the Internet.
16 However, certainly Brown & Williamson did not put it there,
17 nor did any of the defendants, and just to avoid any
18 possible claim of waiver, although I think such a claim
19 would not be well taken, but to avoid any possible such
20 claim, I believe the document should be kept under seal.

21 MR MCCLAIN: Let's simply stipulate that we will
22 not claim waiver, nor will we allow someone else to claim
23 that you have waived any privilege simply by attaching it.
24 The Court can rule on it in its own course.

25 MR CUNHA: Ken, I appreciate your doing so. The

1 problem I have is such a stipulation will not be binding on
2 plaintiffs that are litigating the dozens of other smoking
3 and health cases in the United States now, and so it is not
4 useful to me outside of this particular litigation.

5 MR MCCLAIN: All right. I mean, so that we can
6 have reference to what document we are referring to, I will
7 ask that it be attached and you can move the Court to seal
8 it or whatever you want to have done with it.

9 MR CUNHA: I object to your doing so. Obviously
10 I cannot prevent you from doing whatever it is you are
11 going to do.

12 MR MCCLAIN: Let's mark the next one as Exhibit
13 28.

14 **(Exhibit 28 marked by the Reporter.)**

15 MR CUNHA: Could we take a look at it before you
16 ask questions? (Pause) I am going to object to the
17 examination on this document based on relevancy grounds. I
18 do not see any relevance to the issue of jurisdictional
19 contacts with Missouri, but that said I am not going to
20 direct the witness not to answer questions.

21 MR MCCLAIN: Okay. Who is Mr Crawford?

22 A. I believe it is Mr Purdy Crawford, who was at
23 that time I think Chairman of Amasco in Canada.

24 Q. And Amasco was the parent company of Imperial
25 Tobacco in Canada?

1 A. That is my understanding.

2 Q. And you had an ownership or -- strike that.

3 In the previous document that we saw today you referred to

4 Imperial Tobacco as an affiliate company; is that correct?

5 A. Associate.

6 Q. Associate company. And by "associate" how

7 does that differ from a company like B&W?

8 A. An associated company is one where the parent

9 holds less than 50 per cent of the equity.

10 Q. So you are an investor but you are not the

11 controlling shareholder, is that right?

12 A. Correct.

13 Q. All right. In this letter to Mr Crawford the

14 subject appears to be the development of a "safe"

15 cigarette?

16 A. So it appears.

17 Q. Have you seen documents or heard discussions

18 on this subject in the past?

19 A. I am aware of discussions on this subject.

20 Q. Were you aware of -- my reading of this is

21 that Mr Sheehy was trying to discourage Mr Crawford from

22 approaching the smoking and health problem in the way that

23 he was approaching it, that is trying to develop a "safer

24 cigarette". Is that how you read the document?

25 MR CUNHA: Object to the question. The document

1 itself is the best evidence of its terms. It is improper
2 to ask for the witness to speculate what Mr Sheehy may or
3 may not have had in his mind when he wrote the document.
4 There is no foundation that this witness has any knowledge
5 about what is in this document, other than the document
6 itself, and for that the document is the best evidence of
7 its terms.

8 MR MCCLAIN: I just asked the witness how he
9 read the document.

10 MR CUNHA: I understand that, but it is not
11 probative. Without a foundation it is not probative, Ken.

12 MR MCCLAIN: It is probative of the next
13 question I am going to ask. Can you answer my question?

14 A. Am I entitled to answer it?

15 MR CUNHA: I am not going to direct you not to
16 answer. You can answer if you can.

17 A. Can you repeat the question please?

18 MR MCCLAIN: Sure.

19 **(Reporter re-read the question.)**

20 MR CUNHA: Same objections.

21 A. It would appear to be a plausible
22 interpretation of the document.

23 MR MCCLAIN: With that understanding in mind,
24 have you heard other discussions of the BAT Group's
25 position in regard to development of a safer cigarette, so

1 called?

2 A. Yes.

3 Q. What do you understand the position of the BAT
4 Group to be on that subject?

5 MR CUNHA: Object to the form of the question.

6 A. The discussion that I have heard is that,
7 given that the causation factors in various diseases are
8 not known, it would be a difficult if not impossible task
9 to develop a so called safer cigarette.

10 MR MCCLAIN: Has the BAT Group discouraged its
11 subsidiary companies from approaching the smoking and
12 health issue by the development of a "safe" cigarette?

13 A. By the BAT Group do --

14 MR CUNHA: I object to the form.

15 A. By the BAT Group do you mean B.A.T Industries
16 plc.

17 Q. Yes.

18 A. I am not aware of any such.

19 Q. Has BAT Holdings or any affiliated company
20 approached the subject in that fashion, as far as you know?

21 A. I am not aware of BAT Holdings,
22 British-American Tobacco (Holdings) having given any such
23 guidance or direction.

24 Q. Has the position that you have expressed, that
25 to approach the smoking and health problem via the

1 development of a "safer cigarette" is too simplistic been
2 conveyed to any member company of the B.A.T Industries
3 Group?

4 A. I -- no.

5 Q. In what context have you heard this subject
6 being discussed?

7 A. In the context of litigation.

8 Q. And what have you heard specifically?

9 MR CUNHA: I am going to direct you not to
10 answer, to the extent that there were communications with
11 counsel in connection with the litigation.

12 MR MCCLAIN: Was that the context?

13 A. Yes.

14 Q. Okay, and it was not a discussion among
15 managers, as an example, without counsel present?

16 A. Not that I can recall.

17 Q. Mark this as 29 please.

18 (Exhibit 29 marked by the Reporter).

19 MR CUNHA: I understand that the document marked
20 as Clarke Exhibit 29 is a privileged document, and again
21 the Court has established criteria for looking into
22 privileged claims, and given that I would object to
23 examination on this document.

24 MR MCCLAIN: Okay. Do you know anything,
25 independent of this document first of all, have you ever

1 seen this document before?

2 MR CUNHA: Again --

3 MR MCCLAIN: Outside the context of litigation.

4 MR CUNHA: You are examining the witness on the
5 document.

6 MR MCCLAIN: I just want to know if he is --

7 MR CUNHA: If you agree that allowing him to
8 answer some non-substantive preliminary questions like that
9 are not a waiver, I will allow him to answer the question.

10 MR MCCLAIN: I do agree.

11 A. I don't recall having seen this document
12 before.

13 Q. Do you know anything about the subject of
14 B&W's desire not to have biological work undertaken at the
15 fundamental research center continue?

16 MR CUNHA: Object to the form of the question.

17 A. I have no knowledge on that subject.

18 MR MCCLAIN: Do you know anything about
19 suggestions made or discussions about the transferring of
20 the Southampton Research Center to the United States?

21 A. It is the first time I have heard of that
22 suggestion.

23 Q. Do you have any knowledge regarding the
24 destruction of documents retained by BAT Group companies
25 and relating to issues of smoking and health outside of

1 what some lawyer might have told you?

2 A. I am aware that companies within the B.A.T
3 Industries Group of companies operate various records,
4 management policies, and that those policies will permit
5 destruction of documents after they cease to be of value or
6 use.

7 Q. Do you know of any program, independent of
8 what any lawyer has told you, to destroy documents
9 regarding smoking and health to prevent their production in
10 litigation?

11 A. I am not aware of any.

12 Q. Are you aware of any attempts to send
13 documents to the UK that originated in the United States
14 regarding the issues of smoking and health?

15 A. I have heard that that allegation has been
16 made.

17 Q. And do you know of any facts which would
18 support or disprove that allegation either way?

19 A. All I know is that no such documents have been
20 received by B.A.T Industries.

21 Q. Have any documents been received by any other
22 company in the group?

23 A. I would not know.

24 Q. Does that mean as far as you know they have
25 not received them?

1 A. I have not checked with them.

2 Q. Your answer leaves an ambiguity in my mind.

3 Does that mean that you have some question as to whether
4 they have received them and just have not checked?

5 A. I have no knowledge on the subject.

6 Q. Has any one instructed you not to enquire
7 about the subject?

8 A. Nobody has instructed me not to enquire, but
9 equally I have not made positive enquiries myself.

10 MR CUNHA: I have given you great latitude
11 today, but note my continuing objection that this line of
12 questions has nothing to do with contacts with Missouri and
13 the jurisdictional issue that is the basis for the
14 examination.

15 MR MCCLAIN: You and I take a different view of
16 that. If as an example B.A.T Industries Inc was involved
17 in a conspiracy to deprive the Court of Missouri of
18 documents, that would grant jurisdiction to this court over
19 such a company, so I have a fundamental disagreement about
20 your interpretation of law.

21 MR CUNHA: Ken, let me say this. You have not
22 asked any questions today directly of Missouri. That is
23 number 1. Number 2, to the extent that you take the view
24 that because you have a theory of conspiracy jurisdiction
25 that opens up all merits discovery, I believe that the

1 courts would disagree with that, first, and second there is
2 no court in Missouri that has recognized the existence of
3 conspiracy jurisdiction.

4 MR MCCLAIN: No one has been asked.

5 MR CUNHA: It is not in the Missouri long arm
6 statute.

7 MR MCCLAIN: The Missouri long arm statute
8 provides that it is intended to effectuate the greatest
9 jurisdiction possible consistent with due process.

10 MR CUNHA: And many courts have held that
11 conspiracy jurisdiction is unconstitutional. We don't have
12 to discuss that here today.

13 MR MCCLAIN: You started the subject up. I have
14 very few more questions and, as you know, I have not tried
15 to wander too far afield. What is the next Exhibit in
16 order. Here is Exhibit 30.

17 (Exhibit 30 marked by the Reporter).

18 MR CUNHA: I am going to object to examination on
19 Clarke Exhibit 30. This is a privileged document.

20 MR MCCLAIN: Let me simply ask the witness have
21 you seen this document before today, recognizing you are
22 not waiving any privilege by having him answer this.

23 MR CUNHA: Whether he has seen it before today?

24 MR MCCLAIN: Yes.

25 A. I may have seen it though I cannot

1 specifically recall.

2 Q. Does this refresh your recollection regarding
3 discussions that you had with anyone, other than lawyers,
4 regarding the subject of actions taken by BAT or BAT Group
5 companies to ensure that research reports were not
6 distributed widely throughout the company?

7 MR CUNHA: I object to the form of the
8 question. I would ask that you use the correct names of
9 the companies so we don't get confused here. I don't think
10 we are using "BAT" as a defined term today.

11 MR MCCLAIN: If you need some clarification --

12 A. Well, the only discussions where the subject
13 matter of that document may have cropped up would have been
14 with lawyers.

15 Q. So in your role as Company Secretary this
16 subject has not been brought to your attention?

17 A. I did not say that.

18 Q. Outside of by the lawyers?

19 A. Outside of the lawyers. Well -- this document
20 appears to cover a number of different topics.

21 Q. Tell me which ones have come to your
22 attention, outside of discussions with the lawyers, in your
23 role as Company Secretary?

24 MR CUNHA: Why don't we do this. You are
25 getting into now real examination on the subject of a

1 document which is a privileged document. If you just want
2 to ask him some questions which don't ask him to refer to
3 the document but are just questions that you have, then I
4 think that is fair, but I am not comfortable with you
5 examining him on the substance of the document itself.

6 MR MCCLAIN: Have you had any discussions in
7 your role as Company Secretary regarding documents
8 routinely sent out by Southampton to CAC companies?

9 A. In my role as Company Secretary of B.A.T
10 Industries plc?

11 Q. Yes.

12 A. No.

13 Q. In any official capacity you have had with the
14 company?

15 A. In my role as Company Secretary with
16 British-American Tobacco Company Limited, I guess I
17 probably did.

18 Q. And what was the nature of that discussion?

19 MR CUNHA: I am going to object to that. I do
20 not see what a discussion that he had when he was working
21 for British-American Tobacco company would have to do with
22 jurisdiction over British-American Tobacco industries.

23 MR MCCLAIN: I don't know, I have not heard the
24 answer yet.

25 MR CUNHA: Again you say "I don't know", and

1 that is exactly the point. There is no relationship to the
2 jurisdictional issue with respect to --

3 MR MCCLAIN: I do not need to get into this
4 debate with you. It is very clear what it could have.

5 MR CUNHA: It is not.

6 MR MCCLAIN: If in fact British-American Tobacco
7 was directed not to distribute documents as a subsidiary by
8 BAT plc, and this man knows about it, it could be relevant
9 to the same direction given to Brown & Williamson. There
10 is a whole variety of relationships that could be disclosed
11 by answers to this question and he should be allowed to
12 answer without interruption by you.

13 MR CUNHA: The point is that you should ask
14 questions with respect to B.A.T Industries; that is the
15 point.

16 MR MCCLAIN: Not if he had no role in that
17 capacity. If he has information about the subject in some
18 other role, it may inform discovery on this issue.

19 MR CUNHA: But, Ken, you are asking his general
20 knowledge with respect to a BATCo issue.

21 MR MCCLAIN: Are you instructing him not to
22 answer?

23 MR CUNHA: No, I am not.

24 MR MCCLAIN: Then let me ask the questions.

25 MR CUNHA: It is important to make the record

1 but the Court specifically directed what this examination
2 was to cover, and you are way outside those parameters at
3 this point.

4 MR MCCLAIN: The Court specifically instructed
5 the lawyers not to interfere with depositions and that any
6 company doing that would risk having their motions denied
7 on basis of interference. At this point I believe you are
8 interfering with my deposition of this witness and I would
9 like to continue to ask questions. Simply state your
10 objection and then we will move on without this long
11 debate.

12 MR CUNHA: The record will reflect otherwise
13 but, as I said, I am not directing the witness not to
14 answer. I think it is important to make the record clear
15 however.

16 A. My answer to your question is that I never
17 received any instruction or direction from B.A.T Industries
18 plc in relation to documents relating to British-American
19 Tobacco Company Limited when I was its Secretary.

20 MR MCCLAIN: What was the discussion that you
21 recalled being part of then that relates to this subject?

22 MR CUNHA: Objection.

23 A. I was responsible in my role as Company
24 Secretary of British-American Tobacco Company Limited for
25 ensuring that there was a properly organized records

1 management system within British-American Tobacco Company
2 Limited, and it was in that context.

3 MR MCCLAIN: And how did those duties relate to
4 this subject? Can you explain that to me?

5 A. Which subject?

6 Q. The subject of research reports circulating
7 either from British-American Tobacco Company Limited or to
8 British Tobacco Company Limited from other group companies?

9 MR CUNHA: Objection.

10 A. The system which was put in place within
11 British-American Tobacco Company Limited required series of
12 documents, schedules of series of documents with stated
13 retention periods, and it was in relation to the
14 preparation of those schedules that I would have had such
15 discussions.

16 Q. And do you recall what those schedules were?

17 A. They covered --

18 MR CUNHA: Objection. You can answer.

19 A. They covered every category of document within
20 the companies' files.

21 MR MCCLAIN: Was there any attempt made when you
22 were at British-American Tobacco Company to ensure that
23 documents which had been requested in litigation or were
24 relevant to ongoing litigation were preserved.

25 MR CUNHA: Objection. You can answer.

1 A. All documents which might be relevant to
2 litigation were preserved.

3 MR MCCLAIN: And was that the policy of the BAT
4 Group in regard to all its subsidiaries?

5 MR CUNHA: Object to the form of the question
6 because again there is no entity called the BAT Group.

7 A. I can only answer in relation to
8 British-American Tobacco Company Limited, and that was its
9 policy.

10 MR MCCLAIN: Do you know whether Brown &
11 Williamson had a similar policy?

12 A. I believe it had and has a policy.

13 Q. Do you know whether or not the BAT Legal
14 Department has had regular contacts with the law firm of
15 Shook Hardy and Bacon?

16 MR CUNHA: Object to the form of the question.
17 I don't know what you mean by BAT Legal Department.

18 A. Could you specify which company you are
19 referring to, please?

20 MR MCCLAIN: B.A.T Industries plc?

21 A. I am aware that lawyers from B.A.T Industries
22 plc have visited Shook Hardy and Bacon.

23 Q. Has Shook Hardy and Bacon ever represented BAT
24 plc?

25 A. B.A.T Industries plc?

1 Q. Yes, sir.
2 A. Not to my knowledge.
3 Q. What about BAT Holdings?
4 A. Not to my knowledge.
5 MR CUNHA: Could we take five minutes.
6 (A short break.).
7 MR MCCLAIN: This is number 31, this chart that
8 has been graciously supplied to me by your counsel
9 Exhibit 31 marked by the Reporter.)
10 MR CUNHA: It is actually a series of documents,
11 as I understand it.
12 MR MCCLAIN: This one appears, the last one
13 appears to be dated 1995. Can you tell me what the vintage
14 of the document is, if you know. The document I was
15 referring to is the letter that is attached to the back.
16 It is some date in 1995.
17 MR CUNHA: Maybe you could tell us which
18 document you are talking about.
19 MR MCCLAIN: He had the letter right there, the
20 1995 letter that is attached to the back.
21 A. As I understand it, you were asking for a
22 chart on tobacco interests. This letter relates entirely
23 to financial services.
24 Q. Okay. I am simply -- I have not even studied
25 the document. I am asking you can you date the charts that

1 are at the beginning of this document. I see that a
2 document within the middle says "1995". I have no idea
3 whether or not that helps date it or not.

4 A. I would guess that it is, that this document
5 is dated somewhere between 1989 and 1994, say.

6 Q. Okay. Do you believe that it is an accurate
7 graphic depiction of the structure of the companies in that
8 time period?

9 A. It is a simplified -- because it does not
10 include all the intermediate holding companies.

11 Q. All right. Do the consolidated financial
12 statements of B.A.T Industries plc contain the operational
13 results of B&W?

14 A. The consolidated group results do.

15 Q. Do they also contain the activities of BAT(H)?

16 A. British-American Tobacco Holdings is only an
17 investment holding company, but to the extent that it pays
18 dividends to B.A.T Industries plc its results are included,
19 yes.

20 Q. I do not believe I have any further
21 questions. Thank you very much for your patience.

22 **Cross-examination by Mr Cunha.**

23 MR CUNHA: I have some questions. First, Mr
24 Clarke, I would like to take you back to the document
25 marked today as Clarke Exhibit 2. Do you recall that you

1 were asked some questions regarding the Scheme of
2 Arrangement in 1976, by which B.A.T Industries plc became
3 the ultimate parent of British-American Tobacco Company?

4 A. I do.

5 Q. There was some questioning with respect to
6 whether in that Scheme of Arrangement two companies
7 combined to form one company. The question I have for you
8 is, is it your understanding that in that Scheme of
9 Arrangement British-American Tobacco Company combined with
10 Tobacco Securities Trust Company Limited to become BAT
11 Companies plc?

12 MR MCCLAIN: Object to the form of the
13 question. It is leading.

14 MR CUNHA: You may answer.

15 A. The effect of the Scheme of Arrangement was to
16 make B.A.T Industries plc the parent holding company of
17 British-American Tobacco Company Limited. Both companies
18 retained their separate legal personalities.

19 MR MCCLAIN: Move to strike, the witness
20 rendered a legal opinion.

21 MR CUNHA: Did British-American Tobacco Company
22 in your understanding continue to exist as a company
23 following the Scheme of Arrangement?

24 A. It did.

25 Q. Does British-American Tobacco Company in fact

1 continue to exist today?

2 A. It does.

3 Q. Would you look at Clarke Exhibit 2. On the
4 second page, it states:

5 "In 1976, following a Scheme of Arrangement
6 approved by the Court, British-American Tobacco Company was
7 merged into Tobacco Securities Trust Company Limited, which
8 changed its name to B.A.T Industries."

9 Do you see that language?

10 A. Yes.

11 Q. Do you understand that language to mean that
12 British-American Tobacco Company lost its identity as a
13 company in connection with the Scheme of Arrangement?

14 MR MCCLAIN: Object to the form of the question
15 as leading.

16 A. British-American Tobacco Company Limited did
17 not lose its separate corporate existence.

18 MR CUNHA: Do you know whether the term "merged"
19 or "merger" in the UK has a meaning that is the same or
20 different than a meaning that would be ascribed to that
21 term in the United States?

22 MR MCCLAIN: Object to the form of the
23 question. It is leading.

24 A. I am not an expert in US law but my
25 understanding is that the term "merger" when used in the UK

1 is somewhat wider than the expression when used in the
2 United States.

3 MR MCCLAIN: Move to strike the witness's
4 answer. He professed lack of knowledge about the subject.

5 MR CUNHA: Can I ask you some questions now
6 regarding B.A.T Industries contacts or lack thereof with
7 the State of Missouri. Could you tell me what the business
8 is of B.A.T Industries plc?

9 A. It is an investment holding company.

10 Q. How many offices does B.A.T Industries plc
11 have?

12 A. One.

13 Q. Where is that office located?

14 A. Here in London.

15 Q. Do you know where B.A.T Industries plc is
16 incorporated?

17 A. It is incorporated in England.

18 Q. Other than the office in London, does B.A.T
19 Industries have any other offices?

20 A. No.

21 Q. How many employees does B.A.T Industries have?

22 A. I cannot give you an exact number at this
23 point in time but it would be in the region of 120 or 130.

24 Q. Has it ever had substantially more employees
25 than that at any time in its existence?

1 A. I believe the maximum number it has ever had
2 is 185.

3 Q. Has B.A.T Industries ever manufactured tobacco
4 products?

5 A. No.

6 Q. Has it ever manufactured any other products?

7 A. No.

8 Q. Has B.A.T Industries ever marketed tobacco
9 products?

10 A. No.

11 Q. Has it ever marketed any other products?

12 A. No.

13 Q. So obviously it has never manufactured or
14 marketed tobacco products in Missouri?

15 MR MCCLAIN: Object to the form of the question
16 as leading.

17 A. That is correct.

18 MR CUNHA: Has B.A.T Industries ever packaged
19 tobacco products?

20 A. No.

21 Q. Has it ever packaged any other products?

22 A. No.

23 Q. Has B.A.T Industries ever sold tobacco
24 products?

25 A. No.

1 Q. Has it ever sold any other products?
2 A. No.
3 Q. Has B.A.T Industries ever distributed tobacco
4 products or any other products in the State of Missouri or
5 anywhere else?
6 MR MCCLAIN: Object to the form of the question
7 as leading.
8 A. No.
9 MR CUNHA: You think it is leading. Do you want
10 me to break it down?
11 MR MCCLAIN: I do not really care. All you are
12 doing is reading his affidavit. You do not need to do this
13 as far as I am concerned, but it is your exam.
14 MR CUNHA: We will break it down. Has B.A.T
15 Industries ever distributed tobacco products?
16 A. No.
17 Q. Has it ever distributed any other products?
18 A. No.
19 Q. Has B.A.T Industries ever advertised tobacco
20 products?
21 A. No.
22 Q. Has it ever advertised any other products?
23 A. No.
24 Q. Has B.A.T Industries ever been licensed or
25 qualified to transact business in the State of Missouri?

1 A. No.

2 Q. Has B.A.T Industries ever transacted business
3 within the State of Missouri?

4 A. No.

5 Q. Has B.A.T Industries ever maintained an
6 office, place of business or mailing address in the State
7 of Missouri?

8 A. No.

9 Q. Has B.A.T Industries ever entered into any
10 contracts to supply goods or services within the State of
11 Missouri?

12 A. No.

13 Q. Has B.A.T Industries ever maintained any
14 office or agent, distributor, servant, employee, wholesaler
15 or other representative within the State of Missouri for
16 the transaction of business of any nature?

17 A. No.

18 Q. Has B.A.T Industries ever owned, used or
19 proposed any real or tangible personal property of any kind
20 situated within the State of Missouri?

21 A. No.

22 Q. Has B.A.T Industries ever maintained a bank
23 account anywhere in the State of Missouri?

24 A. No.

25 Q. Has B.A.T Industries ever had a telephone

1 listing anywhere in the State of Missouri?

2 A. No.

3 Q. Has B.A.T Industries ever paid taxes of any
4 kind in the State of Missouri?

5 A. No.

6 Q. Has B.A.T Industries appointed any agent for
7 service of process in the State of Missouri?

8 A. No.

9 Q. Has B.A.T Industries ever contracted to insure
10 any person, property or risk located within the State of
11 Missouri?

12 A. No.

13 Q. Have any of B.A.T Industries' subsidiaries
14 ever held express or implied authority to act as
15 British-American Tobacco (Holdings)'s agent to manufacture,
16 market, package, sell, distribute or advertise tobacco
17 products or any other goods or products anywhere in the
18 State of Missouri?

19 MR MCCLAIN: Object to the form of the question,
20 calls for a legal conclusion.

21 A. No.

22 MR CUNHA: Has any other entity ever held
23 express or implied authority to act as British-American
24 Tobacco (Holdings)'s agent to manufacture, market, package,
25 sell, distribute or advertise tobacco products or any other

1 goods or products anywhere in the State of Missouri.

2 MR MCCLAIN: Same objection.

3 A. No.

4 MR CUNHA: Is B.A.T Industries now or was it
5 ever a member of the Tobacco Institute Research Committee?

6 A. No.

7 Q. Is B.A.T Industries now or was it ever a
8 member of the Council for Tobacco Research USA?

9 A. No.

10 Q. Same question with respect to the Scientific
11 Advisory Board of the CTR?

12 A. No.

13 Q. Same question with respect to the CTR Special
14 Projects Group?

15 A. No.

16 Q. Same question with respect to the Committee of
17 General Counsel?

18 A. No.

19 Q. Same question with respect to the Tobacco
20 Institute?

21 A. No.

22 Q. Same question with respect to the Smokeless
23 Tobacco Council?

24 A. No.

25 Q. Have any of the organizations I just asked you

1 about ever had express or implied authority to act as B.A.T
2 Industries' agent?

3 MR MCCLAIN: Object to the form of the question,
4 calls for legal conclusion.

5 A. No.

6 MR CUNHA: Does B.A.T Industries retain Hill and
7 Knowlton Inc?

8 A. No.

9 Q. Has B.A.T Industries ever retained Hill and
10 Knowlton with respect to the smoking and health allegations
11 made against B.A.T Industries by the State of Missouri in
12 this case?

13 A. No.

14 Q. I have no further questions.

15 **Re-Direct Examination by MR MCCLAIN:**

16 MR MCCLAIN: Mr Clarke what are ADRs?

17 A. They are depository receipts which are traded
18 on an exchange in the United States.

19 Q. Do you know whether or not ADRs have been
20 purchased by any citizens of the State of Missouri?

21 A. I don't know whether they have or not.

22 Q. Do you know that in fact one of the largest
23 positions in BAT's ADRs is held by a firm in Kansas City?

24 A. I was not aware of that.

25 Q. Have you made any enquiry about that subject

1 before coming here today?

2 A. No.

3 MR MCCLAIN: No further questions.

4 MR CUNHA: I am done.

5 (Deposition concluded at 4.50 pm).
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1
2 SIGNATURE
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5

6 I declare that I have read my verbatim deposition and the
7 same is true and accurate, except for changes and/or
8 corrections, if any, as indicated by me on the change sheet
9 flypaper page hereon
10

11 Signed in London
12 on the 24 day of September 1998
13

14 
15
16 PETER CLARKE
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CERTIFICATE

I do hereby certify that the testimony of the witness taken in the above-mentioned matter contained herein was reduced to writing in the presence of the witness by means of stenography, afterwards transcribed, and is a true and accurate transcript of the testimony given by the witness.

I further certify that I am not connected by blood or marriage with any of the parties, their attorneys or agents and that I am not interested, directly or indirectly, in the matter of controversy.

In witness whereof I have hereunto set my hand in London, England, United Kingdom.

1st day of Sept 1998



AILSA WILLIAMS

PETER CLARKE

E R R A T A

Page	Line	Description
6	16	"Willow Mead, Wonston"
21	11	"co-terminous".
44	24	"GPC Approved".
47	14	"Edmondson"
60	9	"key decisions".
75	10/11	"...the Earl Cairns"
91	14	"Industries".
92	10	"New Business Development".
94	8	"premier".
95	7/8	"New Business Development".
95	15/16	"New Business Development".
95	23	"New Business Development".
117	23/24	"Imasco".
123	3/4	"...various records management policies..."
130	20	"...the company's files".

P. C. Clarke